

**IN THE HIGH COURT OF TANZANIA**  
**TABORA DISTRICT REGISTRY**  
**AT TABORA**

**DC. CRIMINAL APPEAL NO. 115 OF 2019.**

[Originating from Criminal Case No. 09 of 2017 at the  
District Court of Urambo]

**HARUNA JUMA HAMISI.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

Date of Last Order: 30/07/2021

Date of Delivery: 18/8/2021

**AMOUR S. KHAMIS, J.**

Haruna Juma Hamisi was arraigned in the District Court of Urambo for the offence of armed robbery contrary to Section 287 "A" of the Penal Code, Cap 16, R.E 2002.

It was alleged that he stole cash Tshs. 300,000/= and two mobile phones valued at Tshs.170,000/= properties of one Hamisi s/o Majaliwa.

It was further alleged that immediately before, during and after such stealing, he used a panga and iron bar against the said Hamisi Majaliwa to obtain and retain the stolen properties.

Upon trial, Haruna Juma Hamisi was found guilty, convicted and sentenced to serve thirty (30) years in jail.

Aggrieved by the conviction and sentence, Haruna Juma Hamisi, hereinafter to be referred to as the appellant, initiated this appeal raising six grounds intended to fault the proceedings and Judgment of the trial Court.

The major ground of appeal was that he was not properly identified as a suspect, hence the prosecution failed to prove its case beyond reasonable doubts.

He asserted that the trial magistrate wrongly convicted and sentenced him basing on weak and unreliable visual identification evidence.

When the appeal was set for hearing, Haruna Juma Hamisi attended in person while the respondent was represented by Mr. Deusdedith Rwegila, learned State Attorney.

Mr. Rwegila opted to submit first and whole somely supported the appeal for the reasons that the trial Court Judgment showed that the appellant was wrongly identified at the scene of crime.

He reasoned that the identity of PW1 and PW2 did not rule out the possibility of a mistaken identity.

The learned counsel pointed out that Page 8 of the typed proceedings showed that PW1 was not at the scene, but rather he was about 30 metres away from the scene and wondered how such a person could see the appellant with an aid of electric bulb.

He submitted that such a distance gives a possibility for a mistaken identity.

He adjoined that the evidence of PW 2 at pages 9 and 10 of the proceedings missed one ingredient, that is, the witness did not state the type of weapon used by the invaders.

He ratiocinated that in such circumstances, it was difficult to prove that the invaders were armed.

Further, Mr. Rwegira contended that the incident took place on 13/04/2016 while the accused was arrested on 28/12/2016, almost eight (8) months later.

The learned State Attorney referred to the prosecution witnesses who stated that the appellant was their village mate and alleged that immediately after the incident, he ran away.

In response to that, he submitted that such evidence did not have a direct link because, records showed that the appellant was a resident of Ndorebo village and not Mwangaza village as alleged by the victim and other prosecution witnesses.

Mr. Rwegila also argued that the evidence of the investigator (PW3) did not show as to when the victim reported the incident at the Police Station and did not disclose as to when the appellant was arrested.

The learned counsel further asserted that records did not clearly show if the victim named the accused (appellant) to relevant authorities immediately after the incident or not which negated the prosecution case.

Mr. Rwegila submitted that the charge of armed robbery was not proved beyond reasonable doubts and as such unreservedly supported the appeal.

On his turn, the appellant adopted contents of the Petition of Appeal and supported submissions by the learned State Attorney. He prayed to be acquitted by this Court.

I had the advantage of going through the records of this appeal and sufficiently considered the parties' submissions.



Whereas the appellant raised the issue of the trial magistrate's failure to comply with requirements of Section 312 (1) and (2) of the Criminal Procedure Act, Cap. 20, R.E 2019, the issue of visual identification was paramount amongst the six grounds of appeal.

When a Court relies on visual identification, among the important aspects to be considered is the time the witness had with the accused under observation, the distance at which the witness had the accused under observation, and if there was light, then the source and intensity of such light, and also whether the witness knew the accused before the incident.

Therefore, before entering a conviction on the basis of visual identification, the Court must ensure that such identification is watertight.

This has been well presented in the famous case of **WAZIRI AMANI V REPUBLIC**. (1980) TLR 250 wherein the Court of Appeal held that:

*"(i) evidence of visual identification is of the weakest kind and most unreliable;*

*(ii) No Court should act on evidence of visual identification unless all possibilities of mistaken identity are eliminated and the Court is fully satisfied that the evidence before it is absolutely watertight"*

In the appeal at hand, the evidence of PW1 did not meet the requirements for perfect identification.

The witness said that he was 30 metres away from the scene, and identified the appellant with the help of an electric bulb. However, He did not describe the intensity of such light

considering that the incident took place at late hours of the night (02:00hrs).

The intensity of light is crucial because even when a witness is purporting to recognise someone he knows, as the case was here, a mistaken identity is often made.

Besides, the appellant was convicted for armed robbery, but the key prosecution witness on that count, PW 2, failed to lead evidence on the type of weapons used by the appellant at a time of the incident.


This omission brought doubts in the prosecution case as there is no evidence to prove the invaders were armed at the time of the incident.

In the result, I find sufficient reasons to grant the appeal. I accordingly join hands with Mr. Rwegila, learned State Attorney that the charge of armed robbery was not proved beyond reasonable doubts.

Consequently, this appeal is allowed. The conviction entered against the appellant is quashed and a sentence imposed on him is set aside. He is to be set at liberty forthwith unless lawfully held for other causes.

It is so ordered.

Dated at Tabora this 18<sup>th</sup> day of August 2021.

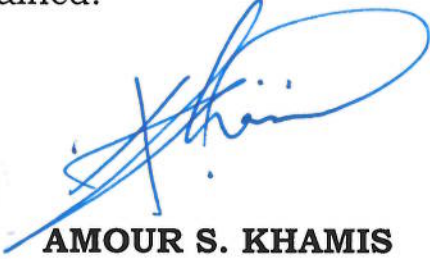
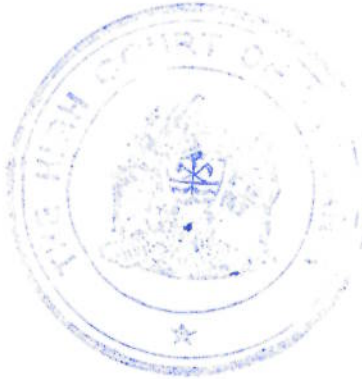


**AMOUR S. KHAMIS**

**JUDGE**

**ORDER:**

Judgment read in open Court in presence of the appellant in person and Mr. Tito Mwakalinga, State Attorney for the Republic. Right of Appeal explained.



**AMOUR S. KHAMIS**

**JUDGE**

**18/8/2021**