

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**SUMBAWANGA DISTRICT REGISTRY**  
**AT SUMBAWANGA**  
**CRIMINAL APPEAL NO. 35 OF 2020**

*(Originated from criminal case No11 of 2020 from Mpanda District court at Mpanda)*

**ALBIN s/o RENATUS @ PEJE ..... APPELLANT**  
**VERSUS**  
**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

*Date of last order: 26/7/2021*

*Date of judgment: 05/8/2021*

**NDUNGURU, J.**

This is a first appeal. It emanates from Criminal case No. 11 of 2020 of the District Court of Mpanda District in which the appellant alongside with two others were convicted, as charged, of the three offences namely; Breaking into building with intent to commit an offence contrary to section 296(a) of the Penal Code, and two counts of stealing contrary to section 258(1) and 265 of the Penal Code. Before the trial court, the prosecution

alleged that on 23<sup>rd</sup> day of December,2019, the appellant with his fellow namely Lucas s/o Alfred and Sokolo s/o Richard @ DJ Jack at Nyerere area, within Mpanda District did break and enter the office of SUMA JKT with intent to commit an offence therein. It was further alleged that having broken therein, the appellant with his companion stole one Laptop computer make Toshiba valued at 600,000/= the property of Ramadhani s/o Mahamoud @ Abdalah and one Desktop computer make HP PRODESK 400 G4 MT Serial No.CZC8108D43 valued at 885,000/= the property of SUMA JKT.

He was sentenced to five years imprisonment in respect of all three counts. The court directed all sentences to run concurrently. His failure to contain his breath gave rise to this appeal to this Court against both conviction and sentence.

The prosecution case in the trial District court rested on the evidence of seven (7) witnesses. These were PW1 G 8188 PC Shukuru Magala, PW2 Ramadhan Mahamoud, and PW3 Hassan Maulid, PW4 Ramadhan Semvua @ Ramadhan PW5 Benedictor Kabaro, PW6 Petro Kayani and PW7 WP9497 DC Anastedia. None of these eye witnessed the alleged breaking and

stealing. They testified on what they were told on how the offence allegedly took place.

PW1, a police officer attached at Kasokaola Ward. His testimony was that on 18/1/2020 while at his office there went militiamen who informed him that they were suspicious with one Lucas Alfred. That the said Lucas having been arrested when searched was found in possession of one laptop computer. That when interrogated Lucas told him to have stolen it from SUMA JKT office. That among the properties stolen is desktop computer which was sold at Makanyagio. PW1 said he with Lucas Alfred went to Makanyagio where they recovered the said desktop computer. Later Lucas was then sent to the police station.

PW5 is the militiaman who reported the suspicion to PW1. That he witnessed when Lucas was searched by PW1. He said during search laptop computer make Toshiba was found. PW2 a military officer stationed at the office of SUMA JKT. His testimony was that he was informed of the office breaking. That when he rushed to the scene found the office being broken and computer laptop make Toshiba and desktop computer belonging to SUMA JKT stolen. He further said on 18/1/2020 he was called to Mpanda police station to identify the stolen properties. That he identified all of

them. PW3 and PW4 are members of military force attached at SUMA JKT. Their testimony was that their office was broken and the two computers were stolen. While PW6, is the village chairman of Kasokola village. He told the court that he was present when Lucas Alfred was searched and the laptop computer was recovered from his possession.

PW7 was the investigator of the case. He told the court that, Lucas Alfred being sent to the court was interrogated by way of cautioned statement. (Exhibit P7) That during interrogation Lucas confessed to have involved in the breaking of SUMA JKT office and steal two computers. That he also mentioned the appellant and one Sokolo s/o Richard to have been involved in the commission of the alleged crime.

When the appellant was called upon to enter his defence, he strongly denied to have been involved in the commission of the alleged crime. He told the court that he was arrested on 19/1/2020. That at the police station he was interrogated on allegation of possession of the government trophy. That his home was searched but nothing related to the allegations was found. The appellant is now appealing to this court against the conviction and sentence imposed upon him. In his memorandum of appeal, the

appellant has raised two grounds of appeal which I reproduce as hereunder:

1. ***That the trial court erred at by convicting and sentencing the appellant of the offence which was not proved beyond reasonable doubt.***
2. ***That the trial court erred at law by convicting the appellant who was found with nothing stolen therefore he had nothing to do with the offence as the ingredient of the offence was not proved.***

When the appeal was called for hearing, the appellant appeared in person while Mr. Njoroyota learned State Attorney represented the respondent/Republic. The learned State Attorney did not resist rather supported the appeal. Arguing for his appeal, the appellant ha nothing substantial rather prayed the court to adopt his grounds of complaint and consider them.

Supporting the appeal, the learned State Attorney was of the contention that the charge against the appellant was not proved to the standard required by law. He went on submitting that the appellant's

conviction and sentence was basically based on the co- accused confession. He said, section 33 of the Evidence Act Cap 6 R.E 2019 is very clear that confession of the co accused can only ground conviction if there is an independent piece of evidence to corroborate. He said the record does not depict any independent evidence to support the confession of the co accused. The learned Attorney concluded by arguing that the case against the appellant was in anyway not proved. He prayed further the appellant's appeal be allowed.

I had ample time to go through the grounds of appeal raised by the appellant in the petition of appeal, the record of the trial court and the submission of the parties.

The basis of conviction of the appellant is laid at page 11 of the typed judgment of the trial court. The 2<sup>nd</sup> paragraph of the mentioned page reads; ***"the issue for deliberation and determination is whether the 1<sup>st</sup> and 3<sup>rd</sup> accused had cooperated with the 2<sup>nd</sup> accused in breaking and stealing from SUMA JKT office"***. The answer to the above issue is found at the next paragraph of the same page. It reads: ***".....during the interrogation by way of caution statement the 2<sup>nd</sup> accused named DW1 (the appellant)***

***and DW3 as his accomplices on the said theft. The latter were arrested in different time and places. DW3 was interrogated by way of cautioned statement and admitted to cooperate with DW1 (the appellant) and Lucas Alfred (2<sup>nd</sup> accused) in stealing the said laptop computer make Toshiba and the desktop make HP from SUMA JKT office....."***

From the above portrayed version, in the absence of an independent piece of evidence it is clear that the appellant's conviction is rooted from the confession statements of the two co-accused. The law on the evidence of confession of the co-accused is very clear. Even if I assume that the said confession, contained in Exh. P5 and P7, was voluntarily made, I am increasingly of the view that the learned trial Magistrate erred in law in relying on them in view of the clear provisions of **section 33(2) of the Evidence Act, Cap. 6**. The sub-section provides as follows:-

***"(2) Notwithstanding subsection (1), a conviction of an accused person shall not be based solely on a confession by a co-accused".***

Having discarded the discredited the evidence based on the co-accused confession, there remains no scintilla of evidence to corroborate such statements, even if we assume without deciding, that it was voluntarily made. See, **Adolf Macrin v The Republic**, Criminal Appeal No 249 of 2011 CAT (unreported). It goes without saying, therefore, that the appellant was wrongly convicted as argued by the learned State Attorney.

All said, I allow this appeal in its entirety. The conviction of the appellant as well as the sentences imposed on him, are hereby quashed and set aside. The appellant should be released forthwith from prison unless he is held for another lawful cause.

Order accordingly.



  
**D.B NDUNGURU**

**JUDGE**

**5/8/2021**