IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

CONSOLIDATED CRIMINAL APPEAL Nos. 119 OF 2019 AND 45 OF 2020

(Originating from Criminal Case No. 54 of 2018 District Court of Ngorongoro)

SAITOTI PARITOMARI.....1ST APPELLAT

JACKSON JOHN MRASE.....2ND APPELLANT

Versus

THE REPUBLIC .....RESPONDENT

JUDGMENT

5th July & 23rd August, 2021

MZUNA, J.:

Saitoti S/o Paritomari Maraia and Jackson S/o John Mrase @ Men, herein after referred to as the first and second appellant respectively, are currently serving a mandatory sentence of 30 years imprisonment upon conviction by the District court of Ngorongoro at Ngorongoro for two counts of Armed Robbery contrary to section 287A of the Penal Code [Cap. 16 R.E 2019], the charge which they denied. The first appellant preferred Criminal Appeal No. 119 of 2019 whereas the second appellant preferred Criminal Appeal No. 45 of 2020. It was mutually agreed that the two appeals be consolidated. Both are subject of this judgment.

In the first count just like the second count to which the sentences were ordered to run concurrently, the offence is alleged to have been committed on 22nd day of October, 2018 at or about 13:15 hours at Soitisambu to Ololosokwan road in Ololosokwan village within Ngorongoro district and Arusha Region. The said appellants as per the particulars in the first count, are alleged to have unlawfully stolen Tsh. 2,200,000/=, one camera make sonny valued at 600 USD the properties of one GAANGHO S/O WANGU.

In the second count it is also alleged that on the same date time and place, the two appellants unlawfully did steal 260 USD, one Binocular make Bush nell valued at 250,000/= the properties of Simon S/o Sirikwa.

In both two counts, it is alleged that immediately before and after such stealing did use a gun to threaten the said Gaangho S/o Wangu and Simon S/o Sirikwa respectively.

Briefly stated, on 22nd day of October, 2018 at or about 13:15 hours, PW3 Simon Alex Silikwa who is a Tour Guide, was driving a Motor vehicle with some tourists including Gaangho S/o Wangu, a Chinese National. Upon arriving at Oldosokwan Village, they were stopped by gangsters. He had no option. He stopped the motor vehicle whereupon the thugs ordered them to surrender everything they had. They surrendered various properties including

money, camera and binocular, among others. They were also threatened with clubs and a gun shot.

After that incident they reported to the Police station where they made their statements. Within that same time PW4 Inspector John Kijah received a phone call from the Village Chairman PW2 Mr. Marco Lollu. He notified him that with the aid of militiamen and villagers, they had arrested a person whom whey suspected to be among the robbers. It came out that he was the second appellant. To be more specific, PW1 after receiving a call from PW2 went to his home and was briefed about the incident. Then on his way back home he met the second accused, whom PW1 became suspicious after telling him that he was heading at Loliondo, something unusual at that night and was alone. He called PW2. He was interrogated. He admitted to have committed the offence.

He mentioned the first accused and took them to the home of the first accused. The first accused was interrogated as well. He confessed and took the policemen in the forest where they had hidden some stolen properties in that armed robbery incident. They made their statements both at the Police and before the Justice of peace whereby they confessed. The appellants were also identified in the identification parade. They were consequently charged.

In their defence, they denied to have committed this offence. The first appellant said that he was charged simply because he had some

misunderstanding with PW2 Marco Lollu, the Village chairman over ownership of a cow. As for the second appellant he said he was found stranded after he had missed transport that could take him to Wasso area. This came out after his relative Eliud John (DW4) had called him to collect his beans at Arusha.

The trial Magistrate acting on such evidence, believed that they committed the offence and proceeded to convict and sentence them as charged.

The appellants being aggrieved by the conviction and sentence of the trial court, preferred this appeal. There are essentially 10 consolidated grounds (which had been consolidated from the initial 18 grounds of appeal which were preferred from both appellants). The said 10 grounds read as follows:-

1. That the trial magistrate erred in law and facts by basing his judgment and conviction on the weakness of the defence side and not on the strength of the prosecution.

2. The trial Magistrate erred in law and facts by not taking into consideration the material evidence by the two accused persons.

3. The trial Magistrate erred in law and fact by holding that when exhibits are not challenged during tendering stage they are conclusive proof even if their consent is disputed in trial.

4. That the trial Magistrate erred in law and facts by failing to analyse the evidence before him.

5. The trial Magistrate erred in law and facts by relying on hearsay evidence of the prosecution witnesses

6. The trial Magistrate erred in law and facts by relying on the evidence of the Prosecution witness who was biased and having conflict with the 1st accused.

7. The trial Magistrate erred in law and facts by relying on the retracted confession statements of the accused persons without satisfying himself as to their legality.

8. The trial Magistrate erred in law and facts by not calling material witnesses who are the owners of the allegedly robbed and stolen items.

9. The trial Magistrate erred in law and facts by holding that the Prosecution has proved their case beyond reasonable doubt in the circumstance of this case.

10. The trial magistrate erred in law and facts by relying on the defective identification parade which was not properly conducted.

By leave of the Court, the appeal was argued by way of written submission. At the hearing, the appellants were represented by Mr. Frank Mushi, the learned Advocate whereas M/s Akisa Mhando, the learned State Attorney, represented the respondent/ Republic.

Let me start with the first issue as to whether there are procedural defects relevant for grounds of appeal Nos. 3,7 and 10. The main complaint is that it was wrong to hold that simply because the "exhibits are not challenged during tendering stage they are conclusive proof even if their consent is disputed in trial." They allege as well that it was wrong to "rely on the

retracted confession statements of the accused persons without satisfying himself as to their legality." Lastly that, it was an error to "rely on the defective identification parade which was not properly conducted."

Arguing grounds 3 and 7 the learned counsel said that it was wrong thinking that because the exhibit is not contested during tendering, then its contents are not disputed and considered to be conclusive proof. He added that, even if the exhibit is not objected in its admissibility still, it can be challenged during defence evidence, cross examination or final submission.

That, even the conviction was based on a retracted confession. That the court relied on the documents like the identification parade and extrajudicial statements which were not read in court before admission which he says was irregular. Mr. Frank further argued that, before the court reaches at its decision must first ascertain on the relevance of the contents presented before it. He said, failure to do so the court will be considered to have failed to exercise it powers. Still submitting on the same consolidated grounds, Mr. Frank cited to me sections 27 and 28 of the Law of evidence Act, [Cap. 6 R.E 2019] to emphasise the point that for a valid confession worth consideration by the court, it must be made with free will.

In effect he said that the alleged confessions were not voluntarily made because in the appellants' testimonies it is shown that they were beaten and forced to sign the confession. The court failed to conduct trial within a trial in

order to ascertain whether the confession was voluntarily obtained or otherwise in accordance to the law. Due to such defect he prayed for the same to be not relied upon by this court.

To support his position, the learned counsel cited to me the cases of **Robinson Mwanjisi and Three Others vs Republic** [2003] TLR 218 and **Steven Salvatory vs Republic**, Criminal Appeal No. 275 of 2018 CAT at Mtwara (unreported). This defect according to him, renders it incompetent and should therefore be expunged for being improperly admitted.

I response, Ms. Mhando, the learned State Attorney when submitting on grounds 3 and 7, she joined hands with Mr. Frank that the procedure for trial within a trial was not followed after the appellants had said the documents were not voluntarily received. She therefore prayed for his court to expunge the caution statements Exhibits P3 and P4 of both appellants from the court records.

Having admitted the shortfalls on the admission of the involuntary confessions and that they were not read to the appellants, I agree with Mr. Mushi and Ms. Mhando, that the two exhibits be and are hereby expunged from the record. The appellants in the proceedings, had said the cautioned statements were received after being beaten, the fact which necessitated to have conducted trial within trial. That was not done. In any case, a confession

which leads to a true admission is not illegal under section 29 of the Tanzania Evidence Act, cap 6 RE 2019 (herein after TEA). It reads:-

> *29. No confession which is tendered in evidence shall be rejected on the ground that a promise or a threat has been held out to the person confessing unless the court is of the opinion that the inducement was made in such circumstances and was of such a nature as was likely to cause an untrue admission of guilt to be made.*

The second appellant mentioned the first appellant. The first appellant then led the policemen to where he had hidden the properties which were involved in the commission of the offence. The same were identified by the driver, PW3. Such evidence which leads to discovery is relevant under section 31 of the TEA. This cements the prosecution case. I would expunge the cautioned statement (exhibit P3 and P4) but the evidence which led to the discovery of such properties are relevant.

I have resolved the point of shortfalls on the admission of exhibits which is one of the raised points in the first issue. The remaining point is on identification of the suspects and the manner in which the identification parade was conducted.

I start with the mode in which the identification parade was conducted. Mr. Mushi, brought to the attention of this court on the guidelines and restrictions on identification parade. He cited to me the case of **Richard Otieno @Gullo vs R,** Criminal Appeal No. 367 of 2018 (unreported). Mr.

Frank went on describing that the Police Genera Order No. 232(2)(c)(d) requires the police officer who conducts the parade to inform the suspect prior to the conduct of the said parade that he will be put up for identification. And that, the suspect shall be availed a right to call a lawyer or relative as the case may be, to witness the parade. He said, that procedure was not conducted and therefore the whole process is a nullity which cannot be relied upon in the conviction.

In response, the learned State Attorney conceded that, Exhibit P5 (PF 186 Identification Register) was not read over and therefore should be expunged from the record. However, she still maintained that the Evidence of PW3 who identified the appellants at the identification parade is well corroborated by that evidence of PW7 and PW8 at pages 28 and 29 of the typed proceedings respectively. It is relevant. To the learned state attorney, the remaining evidence of PW3, PW7, PW8 and PW9 suffices to prove the identification of the appellants at the identification parade.

According to the learned State Attorney, merely because the appellants were not informed of their right in relation to identification parade, a fact which she conceded, the omission did not occasion injustice to the appellants. It is for this reason, they opted not to cross examine on the aspect of identification parade. That the appellants are estopped from raising this issue of identification parade at this stage. To augment her point, the learned State

Attorney cited the cases of **Nyerere Nyanguge vs Republic**, Criminal Appeal No. 67 of 2010 CAT at Arusha and that of **Steven Jason and Another vs Republic,** Criminal Appeal No. 79 of 1999 (all unreported).

Ms. Mhando asserted further that, it is not legally supported that co accused persons can corroborate the evidence of each other. However, she maintained the position that the fact that, PW1 and PW2 being informed by the 2nd appellant on the involvement of commission of crime by the 1st appellant, is corroborated by the testimony of PW5 as shown at page 24 of the typed proceedings in the effect that the 1st appellant led the police to the place where he hidden a camera and binocular.

There is no dispute now as to whether Exhibit P5 which is identification Register was not read as per the requirement of the law. This is because Ms. Mhando has conceded to such irregularity as clearly submitted by Mr. Frank. Therefore, such Exhibit P5 is hereby expunged from the record. That notwithstanding, as well submitted by Ms. Akisa Mhando still the evidence of PW3, PW7, PW8 and PW9 is strong enough to prove identification of the appellants at the identification parade. Reading from the record, the appellants did not cross examine the aspect of identification parade like the allegation that their picture were taken before the identification parade was done. It emerged during the defence not during cross examination to the officer who conducted it (PW9) A/I Masumbuko. In fact, PW9 confirmed

further that the first appellant told him that he is the one who hidden the camera and binocular. Such evidence is so implicating.

I revert to the second issue on the analysis of the evidence. This issue is gathered from grounds No. 4,5,6 and 8. The court will see whether the trial Magistrate did analyse the adduced evidence. Is it correct to say, the evidence was based on hearsay? Or that there was biasness of the prosecution witnesses who had conflict with the 1st accused? Are there material witnesses not called which weaken the prosecution case? Is it proper to say, the defence evidence was not considered?

On the alleged existing conflict between the 1st Appellant and the PW2, Mr Frank submitted to me that it was wrong to rely on the evidence adduced by the said witness despite the fact that the trial court was informed on such conflict. To cement on his point, Mr. Frank cited the case of **Michael Haishi vs Republic** [1992] TLR 92. In this case he said, the court of Appeal of Tanzania refused to act upon the evidence of the villagers whom their village had hostility with the village of the accused person. He asked this court to discredit the said evidence of PW2 as it is hearsay and biased.

I have read the evidence of the 1st appellant in the record of the trial court. The said 1st appellant purported to say during his defence that they had a dispute on ownership of a cow. This point did not emerge when PW2 testified in court. It emerged in this appeal. It is an afterthought. We cannot

say, PW2, the Chairperson of Soitsumbu village is behind the arrest of the first appellant due to the fact that it is not PW2 who mentioned the 1st appellant to have been involved in the commission of the offence of armed robbery. It is the 2nd appellant who mentioned him after being suspected and arrested by PW1. More so, at the time when PW2 was called as the Chairperson of the Village, there were other people already at the scene of arrest. The alleged conflict or that it was a biased one is baseless.

I go to the issue of hearsay evidence and that even the material witnesses were not called. It was his view that the court shifted the burden of proof to the appellants. According to the learned counsel, the conviction which is based on hearsay is contrary to section 62 of the TEA on the general rule of admissibility of hearsay evidence. He said, going through the testimony of the prosecution witnesses of PW7 and PW2 it is hearsay because they said themselves that the story they said to the court was told to them by the 2nd Appellant. On such argument the Learned Counsel introduced the case of **Vumi Liapenda Mushi versus Republic**, Criminal Appeal No. 327 of 2016 CAT at Arusha (unreported).

On ground of identification the learned counsel faulted the procedure used. He identified five faults to wit; That, PW3 who went to identify the bandits alleged to have robbed him did not give prior description of them. That the appellants were not given the right during the parade as per Police

General Order No. 232. That the parade master did not explain the purpose of the parade. That the parade master did not ask the witness how they identified the suspects. And that the parade register was not read over after admission in court during the trial thus, deserving to be expunged from the record as per the case of **Robinson Mwanjisi & Three others vs Republic** (supra).

On the ground of not calling material witnesses (ground 8), Mr. Frank submitted that, it is only PW3 who is alleged to be present on the material day. Failure to call those two tourists whom are said to have been stolen and the one hit with a club together with PW3 despite the averment that the statement was recorded by the police is uncertain. There is also an argument that the defence evidence was not recorded properly (he says it is very brief) and that it was not considered.

On the issue of failure to call material witnesses, the learned State Attorney referred to the evidence of PW3. She said, the evidence of PW3 who managed to identify the appellants at the identification parade is the material evidence. Therefore, absence of foreigners to testify, does not preclude appellants from the offence which they committed. She therefore prayed for this court to dismiss the appeal for lack of merit.

The first count concerned Armed Robbery which was committed to Gaanghou s/o Wangu by stealing his money Tshs 2,200,000/- and Camera

make Sony valued at 600 USD. I consider it necessary to consider this point. The question is, can a charge be proved without the owner identifying the properties alleged to have been stolen in the armed robbery?

The answer is No. It was important to call the said Gaanghou s/o Wangu. Nothing had been said on his absence. The first count therefore fails.

This takes me to the *third issue* on the outcome or merits of this appeal? This issue comes from grounds No. 1, 2 and 9. The court has to see whether the charge was proved to the required standard of proof. Mr. Frank Mushi argued on grounds 2 and 4, that it is a cardinal principle in criminal law that the accused person should be convicted on the strength of the prosecution evidence and not on the defence weakness. To such effect, the learned counsel cited to me section 110 of the Law of Evidence Act, [Cap. 6 R.E 2019] which among other things provides that whoever desires the court to decide in his favour is burdened to prove the assertions. Mr. Frank Mushi cited to me the book by **Ratanlal & Dhirajlal titled The Law of Evidence, 24th Edition** specifically at page 566. On the same ground the learned counsel also cited to me the cases of **Tumaini Mollel@ John Walker and others vs The Republic**, Criminal Appeal 40 0f 1999 (unreported) and **Joseph Makune vs R** [1986] TLR 44.

On the wake of the above cited authorities, the learned counsel goes on faulting the judgement of the trial court that he was wrong convicting the

appellants because it was not their duty to prove their innocence but the sole duty shouldered by the prosecution. Mr. Frank submitted that, they came to note that few lines of the defence testimony were recorded in the proceeding. Because of that defect the magistrate largely evaluated on the prosecution evidence rather than that of the defence. To build up his argument, Mr. Frank cited to me the cases of **Hussein Idd and Another vs Republic** [1986] TLR 166 and **Shaban S/o Adamu Mwajulu and Another vs The Republic,** Criminal Case No. 131 of 2019 High Court Mbeya (Unreported) at page 9.

The learned counsel further said that according to section 258 of the Penal Code there cannot be theft if there is no proof of ownership of property stolen. Equally in absence of theft, there cannot be robbery or armed robbery. The learned counsel outlined the following key areas which according to him, shows that the case was not proved beyond reasonable doubt. First, that there is no any weapon which was produced before the court to the justification of the alleged committed crime despite allegations of using the club in the commission of that crime. Second, the contradictory testimony from the PW3 who said that he was able to identify both appellants and that of PW7 who said that PW3 identified one person who was in the left side. Third, that there was an indication of coercion which is seen at page 11 of the typed proceedings where the 2nd appellant is alleged to confess to the village and sub-village chairpersons when he alleged to have apologised not to be beaten and confess to have robbed the white people.

To him, the learned counsel sees this as a failure of the prosecution side to prove the case beyond reasonable doubt because the case was tainted with a lot of shortfalls and procedural irregularities.

In counter arguing the submission in chief, Ms. Akisa Mhando was of the view that the prosecution evidence was strong enough to convict the appellants with the offence of armed robbery and that the case was proved beyond reasonable doubt which makes ground number 9 of less importance. The learned State Attorney referred to Section 287A of the Penal Code (supra) which among the elements to be proved is the presence of actual violence in order to obtain a thing(s) intended to be stolen.

Ms. Akisa Mhando cited the testimony of PW3 at page 16 of the proceedings who is quoted to say that when they were at Ololosokwan village suddenly a man came out of the road with a gun and ordered him to stop a vehicle he was driving and two other accused came with local weapons and stated beating him and order them to give them money so that they should not be killed.

Relying on such statement by PW3, Ms. Akisa Mhando supported the judgment that it shows the appellants were armed with a gun and local weapons. She also said that appellants assaulted PW3 and acted violently towards PW3 and the foreigner. PW3 said about the violence to him and the

foreigners of Chinese citizens who got hit with a club and took from him Tshs. 2,200,000/=, binocular, 260 USD and a camera.

The learned State Attorney kept on insisting that, both appellants were properly identified by PW3 at the identification parade. Ms. Mhando further adduced that, the evidence of PW3 which was corroborated by that of PW1 and PW2 suffices to prove the case that the offence of armed robbery was committed by the appellants. PW1 is quoted to have said that after suspecting the 2nd appellant to have been involved in commission of the offence of armed robbery and inform the village chairperson. They arrested the 2nd appellant who told them that it was him and the 1st appellant who robbed the white people.

Ms. Mhando said, the evidence of PW2 corroborated the evidence of PW3. The 2nd appellant is alleged to admit robbing the two white men, different equipment and money. Also that, PW1 and PW2 assisted each other in arresting the 2nd appellant who took them to the 1st appellant's house at Embashi.

Responding to grounds 2 and 4, Ms. Mhando argued that the case was proved beyond reasonable doubt. To her, the trial magistrates took into consideration of the evidence of the defence side as per page 7 of the judgment. She said, the trial magistrate explained reasons for convicting

appellants that they confessed before the police and also the exhibits were tendered in court which appellants did not object.

To support her arguments, the learned state attorney cited to me the cases of **Vuyo Jack vs The DPP**, Criminal Case No. 334 of 2016 CAT at Mbeya (Unreported) and the famous one of **Goodluck Kyando vs Republic** (2006) TLR 363.

In rejoinder, Mr. Frank reiterated his submission in chief by arguing that, the fact that the learned state attorney conceded exhibits to be expunged from the record, the evidence of PW3 remains questionable, tainted with doubts. He went on arguing that, the remaining witnesses except PW3 what they are saying are nothing but hear say which cannot be used to corroborate PW3's evidence.

The question to ask is <u>whether the charge was proved to the required standard of proof?</u>

The offence it is clear from the evidence that it was committed during day time. The charge says at 13.00 Hrs. This case has peculiar features, because PW2, PW4 PW5 said the second appellant was arrested by the Village militia with the assistance of the villagers. He is the one who then led them to the house of the first appellant. The only witness who is alleged to identify the appellants is PW3 who was the driver who was also a victim of the incident. I would like to quote what PW3 said at page 16 of the typed proceedings;

"On 25/10/2018 I was also called at the Police station for identification. I identified camera (white in colour) and binocular. Then I was also called for identification parade. There were more than ten people in the line, I managed to identify these two accused. I identified them in front of their face and back side. These people here are the ones who robbed us."

During cross examination by the appellants, PW3 said;

(By the 1st Appellant);

It was my first time to see you at the scene of crime. You did were black (sic) jacket. You were three in number. You did hold a gun on that day....

(By the 2nd appellant);

... you did hold a "rungu" on that day; you worn (sic) casual clothes. This man (1st accused) was holding the gun on that material day.

In his evidence in chief, PW3 said, when they were stopped by the bandits one man came out of the road with a gun and ordered the car driven by PW3 to stop. Then other two men went there with local weapons and started beating him and one foreigner while ordering them to surrender money so that they could not be killed. It was held in the case of **Mussa Hassan Barie and Albert Peter @ John vs The Republic**, Criminal Appeal No. 292 of 2011 CAT (unreported) that;

'It has equally been held consistently that in order to enhance his or her credibility, a witness of identification would be expected to give a

description of the suspect, in relation to physique, attire etc, and if he knows him, to name him at the earliest opportunity'

In this case as quoted above, PW3 managed to identify the appellants with their attire and weapons they were carrying with them. His evidence is corroborated by the evidence of PW7 (Paschal Daniel) and PW8 (Mwala Sanga). However, these witnesses were called during the identification parade and mixed up with the appellants.

This case did not depend entirely on identification of the suspects. The second appellant was arrested, took PW1 and PW2 to the first appellant. Later, they led the Policemen where they hidden the stolen properties. PW3 was called upon to identify the stolen properties whose description he had earlier mentioned to the Police. Considering all those factors on the issue of identification, I buy no position of Mr. Frank and hold that the identification of appellants and evidence connecting them is watertight. It is not a defective identification as alleged. Therefore, that ground of appeal fails.

Lastly on issue of proof of the charge. According to Mr. Frank, the case was not proved beyond reasonable doubt. This is opposed to Ms. Akisa Mhando, who insisted that the case was proved to the required standard of proof.

As a matter of law, the case has to be proved beyond reasonable doubt. The court has to satisfy itself whether the ingredients constituting the

offence were proved? This position was reaffirmed in the case of **John Makolebela Kulwa Makolobela and Another v. Republic** [2002] TLR 296.

Such proof in a charge of Armed Robbery under Section 287A of the Penal Code, the prosecution has to establish and prove that, there was an act of stealing; that at or immediately after the stealing the perpetrator was armed with any dangerous or offensive weapon or instrument and that, he used or threatened to use actual violence to obtain or retain the said stolen property. Stealing and use of actual violence exists in this case.

The evidence further shows, some of the alleged stolen items were recovered after the police officers were taken by the 1st appellant to where they were hidden under the tree in the bush which are the camera and binocular as well stated by John Kijar, the police officer. Moreover, those stolen properties were identified by the witness by their colours. They were tendered and admitted as exhibit P1 to form part of the trial court proceedings. Also, the certificate of seizure was also identified by the witness who made it. It was tendered and admitted as exhibit P2.

The evidences gathered from records shows, the appellants together with others who are still at large firstly used the gun which was held by the 1st appellant to threaten PW3 to stop the vehicle carrying tourists of China Nationality. They used threats of a gun and club.

Under section 31 of the TEA, I entirely agree with Ms. Akisa Mhando that, discovery of stolen properties resulted from the information given by the 1st appellant. Such evidence is relevant and admissible in law so as to solidify the prosecution case on proof beyond reasonable doubt. The act done by the appellants constitutes armed robbery established under section 287A of the Penal Code [Cap. 16 R.E 2019]. Merely because the gun and club were not tendered cannot weaken the prosecution case.

All being said, after expunging exhibits P3, P4 and P5 from the record as I did, I am convinced that the remaining evidence was strong enough to warrant conviction as the trial magistrate rightly did. The allegation that the recovered properties were shown by the child or that by PW2 is not true. Similarly, the court does not agree with the second appellants that he was charged because he failed to give the policemen some Tshs 21 Million as an inducement not to charge him. Their conviction was not based on the weakness of the defence case. The cited case of **Hussein Idd and Another vs Republic** (supra) is distinguishable.

In the event, I am convinced that the offence of armed robbery was proved beyond reasonable doubt for the second count. The appellants were convicted based on their own admission which led to discovery. Similarly, they were convicted based on the doctrine of being in possession of recently stolen properties, which supports the charge however penal it may be even for

Armed Robbery, see the case of **Ally Bakari & Pili Bakari v. Republic** [1992] TLR 10 (CA).

That notwithstanding, the first count fails because the key witness Gaanghou s/o Wangu who could have described the recovered property involved in the armed robbery did not testify. The conviction of appellants was justifiable for the second count only. I set aside the conviction for the first count and the imposed sentence. This however, does not alter the sentence of 30 years which they are currently serving.

Appeal against the conviction and sentence fails. Appeal for all two appellants stands dismissed.

M. G. MZUNA,
JUDGE.
23/8/2021.