

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA
(APPELLATE JURISDICTION)**

DC CRIMINAL APPEAL NO. 131 of 2020

(Original from Manyoni District Court at Manyoni Criminal Case No. 120 of 2019)

PAUL MKWAWA APPELLANT

VERSUS

THE REPUBLICRESPONDENT

16/9/2021 & 17/9/2021

JUDGMENT

MASAJU, J

The Appellant, Paul Mkwawa, was charged with, and convicted of CATTLE THEFT Contrary to section 258(1) (a) and 268 (1) (3) of the Penal Code, [Cap 16] in the District Court of Manyoni. He was sentenced to serve five (5) years imprisonment, hence the Appeal to the Court against both the conviction and sentence. His Petition of Appeal is made up of two grounds of appeal, including the 1st ground that the stolen cattle which he was allegedly found in possession of, was not produced before the trial Court.

When the appeal was heard in the Court on the 16th day of September, 2021 the layman Appellant appeared in person. He adopted his grounds of

Appeal to form his submissions in support of the appeal as he prayed the Court to intervene.

The Respondent, in the service the learned State Attorney, Ms. Mwajuma Mkonyi, did not contest the appeal on the reasoning that the identification of the stolen cattle was lacking this is because when the victim of crime Hamis Mayombe (PW1) who testified before the trial Court in the absence of the stolen cattle (exhibit P2), he told the court that his cattle had two colours, namely red and black. But when the alleged cattle was tendered by G.7843 (PW2) for admission in evidence (Exhibit P2), both the said witness and the Court testified and noted respectively that the cattle was red in colour, one of its tusks broken.

That said, the court agrees with the Respondent that G.7843 (PW2) was not a reliable witness on the identification of the stolen cattle because the same did not belong to him but Hamis Mayombe (PW1), the owner thereof who testified that his stolen cattle had two colours (red and black) whilst according to G.7843 (PW2), the Certificate of Seizure (Exhibit P1) and the trial Court, the stolen cattle was red in colour.

The Court is of the considered position that the serious contradiction between the victim of crime and PW2 and Exhibit P1 on the identity of the allegedly stolen cattle (Exhibit P2) impacts negatively on the prosecution evidence on the allegation of stolen cattle, if any, by the Appellant. That being the case, the appeal is hereby allowed accordingly. Conviction and sentence severally and respectively are hereby quashed and set aside.

The Appellant shall be released forthwith from prison unless otherwise there was a lawful cause.



GEORGE M. MASAJU



JUDGE

17/9/2021