

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TANGA DISTRICT REGISTRY)**

AT TANGA

CRIMINAL APPEAL NO. 48 OF 2020

(Originating from the Judgment of Tanga District Court
in Criminal Case No. 13 of 2019)

SELEIMAN DAGO @ SWALEHE APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

MKASIMONGWA, J.

The Appellant one Suleiman Dago @ Swahili, stood before the District Court of Tanga District charged with Attempted Armed Robbery Contrary to section 278B of the Penal Code [Cap 16 R.E 2002]. It was alleged that:

"Suleiman S/O Dago @ Swahili on the 4th day of October, 2017 at Magomeni area near Jaje Primary School within the District City and Region of Tanga did attempt to steal the motor cycle with Registration No. MC 725 AQB make SANYA, the property of Victoria Mganga Vicent and immediately before the attempt to steal it, did threaten one Lilian D/O Vicent @ Mganya with a machete in order to obtain the said motor cycle."

He was convicted of the offence as charged and sentenced to fifteen (15) years imprisonment. The Appellant is aggrieved with both conviction and sentence hence this appeal a petition of which lists five grounds of appeal as follows:

- 1. That, the learned trial magistrate erred in law and in fact in convicting the appellant by relying on the cautioned statement which was not tendered as exhibit.*
- 2. That, the learned trial magistrate erred in law and in fact in convicting the appellant based on incredible and unreliable evidence of the prosecution witnesses.*
- 3. That, the learned trial magistrate erred in law and in fact in convicting the appellant failing to notice that it was an accident and not a robbery incident since of the collision of motor cycles.*
- 4. That, the learned trial magistrate erred in law and in fact by failing to consider the defence of the appellant.*
- 5. The prosecution did not prove the case beyond reasonable doubt.*

When the appeal was tabled for hearing before me, the appellant appeared in person whereas Mr. Paul Kusekwa, learned State Attorney,

appeared on behalf of the Respondent Republic. Before stating what the parties had submitted in support of their respective cases, let though briefly, facts of the case be stated. They are as that: the appellant is a resident of Duga area within Tanga City. On 04/10/2017 the appellant together with a fellow (not arrested) were on a motorcycle driven by the fellow and they knocked that with Registration Number MC.725 AQB Make Sanya which was being driven by Lilian Vicent @ Mganga (PW4). The later fell down and according to Lilian Vicent Mganga the appellant came armed with a machete with which he threatened her with a view to stealing the motor cycle. Lilian Vicent Mganga raised an alarm which was responded by people who caught arresting the Appellant when he was attempting to rob the motor cycle. Police Officers, again, arrived there at the scene of crime and re-arrested the appellant. The later was taken to the Police Station where he was charged with the offence as shown above.

When the Appellant was invited to argue the Appeal, he contended he was arrested after he had involved in road accident and that he was caught arrested as the driver of the motor cycle he was embarking had ran away after the place of accident. He was so arrested possessing nothing and that in the case before the trial court, it was the complaint who

brought the motor cycle to be exhibit and that there was no handing over of the property by the Police to the complainant, there at the scene of crime. He said, this case was just fabricated against him. As such the Appeal should be allowed.

On the other hand Mr. Kusekwa objected the Appeal. He submitted that in the case, the prosecution paraded five witnesses in Court whose testimonies corroborated one another to the effect that on the material date, time and place the Appellant and a fellow using a motor cycle knocked that driven by PW4. The later fell down and it is when she was confronted by the Appellant who demanded for the motor cycle while armed with a machete before he was apprehended and handed over to the Police Officers together with the machete in question. It cannot be said that the event was a mere motor accident as the appellant contended as a ground of appeal.

Mr. Kusekwa admitted that indeed in the case, a confessional statement of the Appellant was tendered in evidence. He submitted that the statement was not however the basis of the judgment of the trial court. The judgment was based on others pieces of the prosecution evidence, which evidence was well analyzed by the court as it did for the defence one

as the judgment at page 18 clearly shows. He said the prosecution case was proved beyond doubt. As such the conviction was proper and the appeal is devoid of merit. The same should therefore be dismissed in its entirety.

In a short rejoinder the appellant submitted that although it was stated by the witnesses that he was found in possession of a machete with which he threatened PW4 while demanding for the motorcycle, the same was not produced to the Court as exhibit. He reiterated that the appeal be allowed.

That is all what was submitted by the parties. I have considered the submissions and the evidence on record. Going by the evidence, I find it was proved beyond doubt that Victoria Mganga Vicent (PW5) is the lawful owner of a motor cycle with registration No. MC 725 AQB make Sanya and that on 04/10/2017 at 22:00 hrs the motorcycle was in possession driven by Lilian Vicent (PW4), the motor cycle owner's young sister. There is ample evidence that when she was driving it PW4 was knocked down by another motor cycle on which the Appellant was a passenger driven by the Appellant's fellow. According to PW4 the Appellant approached threatening to cut her with a machete he was possessing while demanding the motor

cycle from her. Again there is ample evidence that the Appellant was arrested there on the spot by the passer byes and was surrendered to the police officers who were called there at the scene. From the scene, the police again collected the machete and the motor cycle the Appellant attempted to rob from the PW4. Both the motor cycle and the machete were tendered to the court as exhibits and were so admitted. That evidence was given by the witnesses and going by the proceedings, the accused did not challenge their testimonies to test their credibility in which case he cannot be successful heard now challenging their credibility. Even if it were so still the prosecution evidence was watertight and it was so even without considering the cautioned statement of the Appellant as the trial court did.

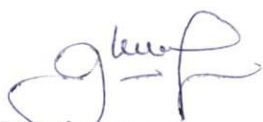
In the Appeal he Appellant contended that the trial court erred when it failed to consider his defence in determining the case. As pointed out by Mr. Kusekwa, the court considered the defence advanced by the Appellant in determining the matter contrary to the Appellant's allegation.

In event, I find the Appellant was properly convicted. As regards to the sentence the Appellant was sentenced to serve fifteen (15) years imprisonment which, in terms of the section under which the Appellant was

charged, is the minimum sentence. As such, I find no way how, I can interfere with it. Accordingly this appeal is not successful. It is as such, dismissed in its entirety.

Dated at Tanga this 23rd day of September, 2021.




E. J. Mkasimongwa

JUDGE

23/09/2021