**IN THE HIGH COURT OF TANZANIA**

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**DC. CRIMINAL APPEAL NO. 96 OF 2019**

*[Originating from Criminal Case No. 12 of 2018 at the Resident Magistrates' Court of Tabora at Tabora]*

**MAJALI MATHEW SENGI ..... APPELLANT**

**VERSUS**

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

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**JUDGMENT**

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*Date of Last Order: 09/07/2021*

*Date of Delivery: 18/08/2021*

**AMOUR S. KHAMIS, J.**

Before the Resident Magistrates' Court of Tabora, the appellant Majali Mathew Sengi was charged and convicted for the offence of Armed Robbery c/s 287A of the Penal Code [Cap 16] R.E 2002 and sentenced to serve thirty years in jail.

Aggrieved by both conviction and sentence, he appealed to this Court armed with four grounds of appeal, to with: -

1. That, the trial Court erred in finding that the prosecution case was proved beyond reasonable doubts.

2. That, the evidence of identification of the appellant was wrongly relied upon by the trial Court in that, prior to the appellant's arrest, the identifying witness had not given physical description of the appellant anywhere and records are silent to that effect.

3. That, the identification of the appellant at the new bus stand where he was arrested, was wanting in cogency and did not remove the possibility of mistaken identity as the identifying witness PW1 gave no details which enabled him to identify the appellant.

4. That, the judgment of the trial Court was fatally defective in that no crucial analysis and evaluation of the defence case was made when the trial magistrate had determined the guilty of the appellant.

When the appeal was called up for hearing, the proceedings were conducted remotely via video technology which enabled the appellant to appear from the Central

Uyui Prison. Mr. John Mkonyi, learned State Attorney, appeared for the Republic.

Opposing the appeal, Mr. Mkony submitted that, according to the evidence on record as adduced by PW1, the appellant conducted an armed robbery and the witness sustained injuries before he was robbed a motor cycle. He was taken to hospital and the appellant was subsequently arrested.

Mr. Mkonyi contended that, PW1's evidence was strong and tightly proved the offence as it was corroborated by PW2's evidence. He submitted that the prosecution evidence was water tight.

As to the consolidated grounds, Mr. Mkonyi contended that PW1's evidence proved that it was the appellant who invaded him and robbed his motorcycle.

The learned state Attorney added that according to PW1, the appellant and him were on the same motorcycle and therefore was able to recognise him at the time of arrest.

The learned State Attorney also argued that, an allegation that the trial court did not consider the appellant's defence was not true allegedly because at page

7 of the impugned judgment, it was shown that the appellant defence was fully considered.

He concluded that, the prosecution proved its case beyond reasonable doubts, and prayed the trial court's decision be upheld.

Submitting in support of the appeal, the appellant contended that the prosecution failed to prove its case beyond reasonable doubts because all exhibits allegedly used to attack the victim were not produced in Court.

He added that, the motorcycle and two mobile phones alleged to have been robbed from PW1 were not tendered in Court.

The appellant submitted further that contrary to the prosecution's allegation that he stole Tshs. 30,000/= from the victim, no money was produced in Court to prove the allegation. Further, he contended that the victim alleged that he was cut by a panga on the leg but no PF 3 was produced.

To sum up, he submitted that the trial Court did not do justice in convicting him.

The respondent asserted that, the incident was alleged to have occurred in 2017 was said to have been immediately reported to the Police Station but no RB number was mentioned in Court.

He questioned as to why the RB number was not produced or named to show that the incident took place prior to his arrest.

I will now address the issues in dispute. To begin with the consolidated grounds, the learned State Attorney was of the view that the appellant was properly identified by the victim because the two boarded the same motorcycle and at the time of arrest, he identified him.

The records, particularly proceedings of the trial Court show that, the victim identified the appellant by face based on the long period of time that the two stayed together on day of the incident.

Further, PW2 identified the appellant because of the 15 minutes conversations he had with him at a time when PW1 negotiated with the appellant on driving him to Ipumbuli.

When it comes to visual identification of an accused person, a number of factors have to be taken into account

by the Court in order to satisfy itself on whether or not the identification evidence is watertight and reliable. (See the case of ***Waziri Amani vs Republic, [1980] TLR 250*** and ***Antony Kigoli vs Republic Criminal Appeal No. 94 of 2005; (CAT, unreported)***

On this point of identification, the appellant wondered why the victim did not at the earliest possible opportunity, mention names of the appellant as his assailant. He also questioned as to why the alleged pieces of evidence like Police RB number were not led in Court.

In so far as the evidence of identifying witness is concerned, the Court of Appeal of Tanzania has on numerous occasions restated that, evidence of visual identification is of the weakest kind and most unreliable.

Courts are not expected to act on such evidence without first eliminating all possibilities of a mistaken identity and satisfying themselves that the evidence is watertight.

In my perusal of the judgment of the trial Court, I was satisfied that, the trial Court's magistrate eliminated all possibilities of a mistaken identity of the appellant.

The evidence of PW1 and PW2 showed that, the two stayed with the appellant and questioned him for almost 15 minutes prior to the incident and that the appellant boarded the victim's motorcycle.

There is no doubt that, both PW1 and PW2 had long observation of the appellant prior to the incident which eliminated all possibilities of a mistaken identity.

The evidence on record further show that the identification by PW1 and PW2 was done during day time.

Further to the above, the substance of evidence given by PW1 did not materially differ from that of PW2 but rather, corroborated each other.

As to the fourth ground of appeal that no crucial analysis of evidence was given by the trial magistrate on the defence evidence, Mr. Mkony pointed out that the same was clearly considered by the trial magistrate at page 7 of the impugned judgment.

Having gone through the impugned Proceedings and Judgment, I entirely agree with Mr. Mkonyi that the defence evidence was properly analysed and evaluated by the trial magistrate.

On the first ground of appeal that the prosecution failed to prove its case beyond reasonable doubt, I see no substance on this allegation because the evidence on record show that none other than the appellant attacked the victim and robed his motorcycle.

For that reason, I join hands with the learned State Attorney that the prosecution case was proved beyond reasonable doubts.

That being the case, I find no merit in this appeal which is hereby dismissed and the trial Court's findings are upheld.

It is so ordered.

**AMOUR S. KHAMIS**

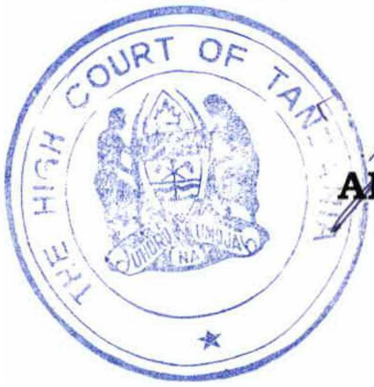
**JUDGE**

**18/08/2021**

**ORDER:**

Judgment read in chambers in the presence of Mr. Tito Mwakalinga, State Attorney for the Republic and the appellant in person.

Right of appeal explained.




**AMOUR S. KHAMIS**

**JUDGE**

**18/08/2021**