

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

**AT BUKOBA**

**CRIMINAL APPEAL NO. 21 OF 2021**

*(Arising from Muleba District Court at Muleba in Criminal Case No. 73 of 2021)*

**MUSSA ABDALLAH.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

*Date of Judgment: 13.05.2022*

*Mwenda, J.*

Before the District Court of Muleba at Muleba, the appellant was charged for Threatening to kill by words contrary to **Section 89 (2) (a) and (b) of the Penal Code [Cap. 16 R.E 2019]**.

At the end of the judicial day, he was convicted and sentenced to serve one year (1) jail imprisonment. Aggrieved by the trial court's findings, the appellant preferred this appeal with three (3) grounds which read as follows:

*1. THAT, the trial District court erred in Law and fact to convict and sentence the appellant for an offence of threatening to kill without due regards that allegations by the victim were a purely concoction due to personal and political grudges between the victim and the appellant hence the case was instituted with a view to impede duties of the appellant as the village chairman.*

*2. THAT, the trial magistrate erred both in law and fact for failure to consider that if the victim was really threatened, he could have immediately reported the threat to village authorities who witnessed loading of the sand or to the nearest. (sic)*

*3. THAT, the trial magistrate erred in law and fact to disregard the testimony of DW1, DW2, and DW3 which disproved in total allegations by the victim that he was threatened.*

During the hearing of this appeal the appellant was represented by Mr. Mulokozi the learned counsel and the republic marshalled Mr. Emmanuel Kahigi learned state Attorney.

During the hearing of this appeal, Mr. Mulokozi the learned counsel for the appellant prayed the grounds of appeal to be adopted to form part of his submission.

With regard to the 1<sup>st</sup> ground of appeal the learned counsel for the appellant submitted that, before the trial court, the Hon. magistrate failed to consider that, the appellant had political grudges with the victim and that in the past the victim had concocted cases against him. He said, on this issue therefore the trial court ought to have seen that there was a likelihood for the appellant to fabricate cases against him. He further said, if the purported words were uttered then they were required to be reflected in the charge sheet.

On the 2<sup>nd</sup> ground of appeal, the learned counsel for the appellant submitted that after the incident, the victim did not report immediately to the relevant authorities. He said, the records shows that the incident occurred on 29/11/2020 but accused person was arrested on 19/12/2020 and there is no reasons as to why there was such delay in arresting the accused person. He concluded by submitting that, failure to report the said intimidation within a reasonable time raises doubt on the prosecution's case.

In respect of the 3<sup>rd</sup> ground of appeal, the learned counsel for the appellant submitted that, the trial court did not consider the defence evidence. He said at page 15 of the typed proceedings, DW3 testified that they were loading sand at the victim's Lorry and that he did not hear the appellant threatening to kill the victim. He went on submitting that, also DW4, the councillor, testified that he knew about the grudges between the Appellant and the victim and that the victim promised that he would make sure the appellant gets jailed. He concluded by submitting that, the Hon. trial Magistrate did not consider the said evidence on the ground that the said witnesses were not at the scene of crime while DW3 was in fact present at the scene of crime. He therefore prayed this appeal to be allowed by quashing the conviction and sentence meted by the trial court.

In reply to the submission by the learned counsel for the appellant Mr. Kahigi the learned State Attorney submitted that, the republic supports the appeal on two issues. One, is the defectiveness of the charge sheet for failure to depict

the uttered words by the accused/appellant. Two, failure by the victim to report the incident immediately after the commission of the crime.

The learned state attorney submitted that, the law requires disclosure of the offence in the charge sheet. He said the charge sheet which moves the court had anomalies especially on the particulars of the offense for failure to disclose the uttered words.

He further submitted that, the records are also silent as to why did the victim fail to arrest the accused as earlier as possible while both are residents of the same village. He concluded by prayers that this court allow the appellant's appeal.

Having gone through the submission by the learned counsels and the trial court's records the issue for determination before this court is whether this appeal is meritorious.

To begin with, this court is mindful on the duty and standard of proof in criminal cases. The law is clear that the burden of proof in criminal case is on the prosecution's side and the standard of which is beyond reasonable doubt. See *SAID HEMED V R. [1987] TLR 117*. In essence it is the duty of the prosecution's side to prove the offence against the accused person as reflected in the charge sheet.

In the present appeal three (3) issues were raised and discussed by the learned counsels. These are defectiveness of the charge sheet, failure to consider the

defence evidence and failure to report the incident immediately after the commission.

With regard to defectiveness of the charge sheet, this court went through the proceedings of the trial court and is in agreement with the learned counsel that the charge which was read over to the accused (appellant) was defective. The same does not provide enough information in the particulars of the offence for the accused to know and appreciate the nature of the offence he is charged with. In the absence of the uttered words in the particulars of the offence clearly the accused was not properly informed of the offence with which he was charged with. The law requires under *SECTION 132 OF THE CRIMINAL PROCEDURE ACT [CAP 20 R.E 2019]* that;

*"Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged."*

This position was also stated by the Court of Appeal sitting at Arusha in the case of *ISIDORI PATRICE V THE REPUBLIC, CRIMINAL APPEAL NO. 224 of 2007* where it was held inter alia that,

*"The principle has been that the accused person must know the nature of the case facing him. This can be achieved if a charge discloses the essential elements of an offence... that absence of disclosure renders the nature of the case facing the accused not to be adequately disclosed to him which vitiates the need to give the accused a fair trial and enable him to prepare his defense."*

That being said this court finds merits with this ground of appeal.

With regard to complaint that the appellant was arrested on 19/12/2020 without assigning reasons for such delay, this court is of the view that this claim is baseless. The records are clear (from the appellant's evidence) that after the offence was committed he was summoned to appear before Muleba police station on 2/12/2020. At police station the appellant was told that the victim has lodged a complaint against him and his statement was recorded. He was then released with a condition that if needed in future, he would be so notified.

With this evidence it is clear that there is explanations as to why the appellant was arrested on the date mentioned hereinabove. That being said this court finds no merits with this ground.

With regard to the complaint that the Hon. Magistrate failed to consider defence evidence especially DW3 who was present at the scene of the crime, this court went through the record and found out that even if the Hon. trial magistrate

took time to consider DW3's evidence (testimony) the same would not be of assistance in respect of the appellant's case. In his testimony, DW3 did not say if he heard the appellant uttering threatening words or otherwise. This ground also fails for lack of merits.

Basing on the analysis on the first ground of appeal, this court finds merits in this appeal as the charge against the appellant is defective. This appeal is hereby allowed, conviction quashed and the sentence meted against the appellant by Muleba District Court in Criminal Case No.73 of 2021 is set aside. The appellant should immediately be set free unless otherwise he is lawfully held.

It is so ordered.



  
A.Y. Mwenda

**Judge**

13.05.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Mulokozi the learned counsel for the appellant and in the presence of Mr. Kahigi the learned State Attorney.



  
A.Y. Mwenda

**Judge**

13.05.2022