

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

AT DODOMA

DC CRIMINAL APPEAL NO. 173 OF 2020

(Originating from Criminal Case No. 226 of 2019 of Manyoni District Court at Manyoni)

JOHN PASCHAL MILINDIAPPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

30/6/2022

JUDGMENT

MASAJU, J.

The Appellant, John Paschal Milindi, and another person were jointly and together charged with **CONSPIRACY TO COMMIT OFFENCE** contrary to section 384 of the Penal Code, [Cap 16 RE 2002] before the District Court of Manyoni at Manyoni. The Appellant was exclusively charged with ARMED ROBBERY contrary to section 287A of the Penal Code, [Cap 16]. At the end of the trial, they were both acquitted of the offence of **CONSPIRACY TO COMMIT OFFENCE** contrary to section 384 of the Penal Code, [Cap 16] but the Appellant was convicted of the offence of ARMED ROBBERY contrary to section 287 A of the Penal Code, [Cap 16]

and sentenced to serve fifteen (15) years imprisonment, hence the appeal before this Court against both conviction and the sentence thereof.

The Appellant's petition of Appeal is made of four (4) grounds of appeal which essentially boil to one ground that the prosecution case against him before the trial Court was not proved beyond reasonable doubt.

When the appeal was called upon for hearing on the 29th day of June, 2022 the Appellant appeared in person. Ms. Bernadetha Thomas, the learned State Attorney, advocated for the Respondent Republic.

The layman Appellant adopted his grounds of appeal to form his submissions in support of the appeal in the Court. He alleged that he did not commit the offence and prayed the Court to allow the appeal.

The Respondent Republic readily supported the appeal reasoning that the prosecution did not prove the case against the Appellant before the trial Court beyond reasonable doubt. This is because the evidence adduced by the victim of crime, Anthony Emmanuel (PW3) did not satisfy the ingredients of the offence of Armed Robbery as so stated in section 287 A of the Penal Code, [Cap 16]. The witness just testified that he was assaulted by the Appellant who managed to get away with his motorcycle

without stating the nature of the weapon used. That since no any kind of arms (weapon) was stated by the Prosecution, the offence of Armed Robbery could not have been proved as against the Appellant.

The Respondent Republic also submitted that all the prosecution exhibits(BM1-BM5) were not read over to the Court upon its admission in evidence contrary to the law. That, the un procedurally admitted exhibits should be expunged from the body of evidence on record. The impugned exhibits (BM1-BM5) are hereby expunged from the record of evidence accordingly. That done, the prosecution case hangs on a too thin thread of evidence to support and sustain conviction against the Appellant.

The Court is *in toto* agreement with the Respondent Republic's reasoning on the appeal. The meritorious appeal is hereby allowed accordingly. The conviction and the purported sentence of fifteen (15) years imprisonment on the offence of Armed Robbery, respectively, are hereby quashed and set aside accordingly. The Appellant shall be released forthwith from prison unless there was a lawful cause to the contrary.



GEORGE M. MASAJU

JUDGE

30/6/2022