

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

CRIMINAL APPEAL NO. 22 OF 2021

[Appeal from the Decision of District Court of Maswa at Maswa]

(Hon. F.R. LUKUNA, RM)

dated the 12th October, 2017

in

Criminal Case No. 91 of 2017

JUDGMENT

NKINGA MABULA..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

Date of Last Order: 20/07/2022

Date of Judgment: 20/07/2022

JUDGMENT

S. M. KULITA, J.

The Appellant herein and one Josila Magoma who is reported died were charged for Armed Robbery contrary to section 287A of the Penal Code [Cap 16 RE 2002], at Maswa District Court. Upon conviction they were sentenced to 30 (thirty) years imprisonment for each of them.

Aggrieved with both, conviction and sentence the Appellant herein lodged this appeal, relying on grounds which can be summarized into the following five;

- i. That there was no proof that there bandits did rob the alleged money Tsh. 700,000/=.
- ii. That the Prosecution side never tendered Panga alleged to have been used in the commission of the crime while the same was said to have been left at the scene by the bandits.
- iii. That the defense case was not considered.
- iv. That the trial Magistrate relied on the PF3 (Exhibit P1) which has no connection with the case.
- v. That the trial Magistrate failed to distinguish the terms "with intent to steal" and "with intent to commit violence".

The State Attorney concedes the appeal that the prosecution case at the trial court was not proved beyond all reasonable doubts.

I agree with the reasons that the Defense Counsel, Ms. Gloria Ndoni, State Attorney has advanced that, the victim (PW1) in the original case testified to the effect that the Appellant herein and his fellow did rob Tsh. 700,000/= from PW2, the one who was possessing them for PW1, but the said PW2 never testified to that extent. She never stated to have been in

possession of the said PW1's money, and that she handed them to the bandits upon been invaded at her residential premise.

PW3 who is the PW2's husband also stated that he was there while the bandits invaded their house but never testified that his wife (PW2) handled money to the said bandits.

Further, the trial court records and submission of the State Attorney transpire that the PF3 (Exhibit P1) that was tendered to court in connection with the injuries that PW1 had sustained regarding the assault by the bandits, is dated 7th April, 2017. However, the particulars of the offence in a charge sheet shows that the crime was committed on 20th June, 2017. It doesn't make sense that victim was attended by the Medical Doctor on 7th April, 2017, that is prior to the commission of the crime on 20th June, 2017. That makes me to agree with the Appellant that this case was fabricated against the Appellant.

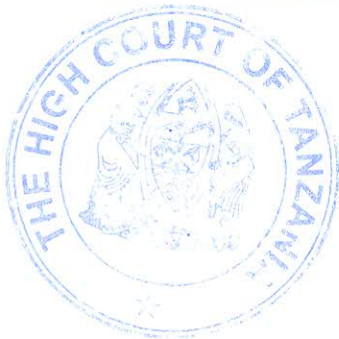
From the above analysis, I can agree with the State Attorney that the prosecution case at the trial court was not proved beyond all reasonable doubts which is a standard of proof for the criminal case. This is a position of the law. We have a lot of authorities on that, including the case of **WOOLMINGTON VS. DDP [1932] AC 462.**

In upshot, I find the appeal meritorious, hence allowed. The Appellant to be released from the prison custody immediately, unless he is held for any other lawful cause.



S. M. KULITA
JUDGE
20/7/2022

DATED at SHINYANGA this 20th day of July, 2022



S. M. KULITA
JUDGE
20/7/2022