

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT DODOMA

(DODOMA DISTRICT REGISTRY)

DC CRIMINAL APPEAL NO. 24 OF 2022

(Originating from Criminal Case No 150/2022 of Dodoma District Court)

SALUM ALFAN KINDAMBA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

29/6/2022 & 13/7/2022

JUDGEMENT

MASAJU, J

The Appellant, Salum Alfani Kindamba and another person, one Venance Zacharia Mtemi Nyanda, were jointly and together charged with and convicted of BURGLARY Contrary to section 294 (1) (a) (2) of the Penal Code, [Cap 16 RE 2019], THEFT Contrary to sections 258 (1) and 265 of the Penal Code, [Cap 16 R.E 2019] and UNLAWFUL POSSESSION OF PROPERTIES SUSPECTED OF HAVING BEEN STOLEN OR UNLAWFULLY OBTAINED Contrary to section 311 of the Penal Code, [Cap 16 RE 2019] in respect of the Appellant alone. They were severally sentenced to serve two

(2) years imprisonment on the offence of Burglary and Theft. The appellant was sentenced to serve one (1) year imprisonment on the offence of Unlawful Possession of Properties Suspected of Being Stolen or Unlawfully Obtained, before the District Court of Dodoma at Dodoma. The sentence were to run consecutively, hence this appeal in the Court against the conviction and sentence.

The Appellant's Petition of Appeal was made of five (5) grounds of appeal, That, there was broken chain of custody of the properties allegedly found in his residence, for the prosecution witnesses didn't disclose the place where the alleged seized properties were kept and how the said properties were received because there was no exhibit register which was admitted in evidence before the trial court to substantiate that the alleged stolen property were actually found in his possession, seized and taken to the police station.

That, the search warrant and the search thereof at his residence was not in accordance with the law.

That, the alleged certificate of seizure did not bore his signature, because he is literate who can read and write but the impugned certificate of seizure was thumbprint signed. That, the thump print signature was not his. Indeed, the Appellant was able to write and read before the Court when he was asked by the Court during the hearing of the appeal. That, the trial court erred in law and fact when she convicted him while the prosecution had not proved its case beyond reasonable doubt. That, the trial court erred in law and fact when it convicted him on the account of

the unprocedurally admitted his co – accused’s cautioned statement who had denied the caution statement and his objection for admission in evidence of the said cautioned statement readily overruled by the trial court without there being an Inquiry as to his voluntary, if any, statement. Lastly, that his defence was not considered by the trial court in the judgement.

The laymen Appellant appeared in person before the Court when the appeal was called on for hearing in the 29th day of June, 2022. He adopted his grounds of appeal to form his submissions in support of the appeal stating that he did not commit the offence . He prayed the Court to allow the appeal.

The Respondent Republic, in the service of the learned state Attorney, Mr Salum Matibu, supported the appeal on the grounds so rightly raised by the Appellant, essentially that the prosecution case before the trial court was not proved beyond all reasonable doubt as so rightly stated by the Appellant in his 3rd ground of appeal.

The prosecution witnesses Insp. Ally Bosijo (PW1) and G.1327 DC Nassoro (PW5) who searched the Appellant’s residence allegedly on search warrant none of them was incharge of a Police Station so as to search the premise on their own capacity. The said prosecution witnesses, therefore needed to be so warranted by their in charge of the police station, which warrant so sanctioning them was not there. The search was therefore in contravention of section 38 (1) of the Criminal Procedure Act, [Cap 20 R.E 2019]. So, the illegally obtained evidence, if any, cannot be part of the

evidence to support the prosecution case. That is to say, the certificate of seizure (Exh P3), which was a result of the illegal search, and which was not signed by the literate Appellant is hereby expunged from the record of proceedings of the trial court. This action along with the fact that there was no any Exhibit Registrar that was admitted in evidence as a proof of the alleged stolen properties being received at the police station and kept there pending trial of the case cements the Appellant's submissions that the case against him was not proved beyond all reasonable doubts.

The Appellant's co - Accused, Venance Zacharia Mtemi Nyanda, objected his alleged cautioned statement being admitted in evidence on the ground that ever since his arrest he had not recorded any such statement but the trial court overruled his objection without there being an inquiry. The said cautioned statement was admitted in evidence [Exhibit P10]. This was Contrary to section 27 of the Evidence Act [Cap 6 R.E 2019]. The said statement was also taken into account in implicating and convicting the Appellant with impugned offences. The cautioned statement (Exh P10) which was unprocedurally admitted in evidence is hereby expunged from the record thereby leaving the prosecution case before the trial court hanging on a too thin thread of evidence to support and sustain conviction against the Appellant.

That said, since the Respondent Republic has conceded all the grounds of appeal, we shall not be detained by unnecessary further reasoning on the meritorious appeal.

Thus, the appeal is hereby allowed accordingly. The Appellant's convictions and sentence thereof respectively, are hereby quashed and set aside accordingly.

The Appellant shall be released forthwith from prison unless there was another lawful cause to the contrary.



GEORGE M. MASAJU

JUDGE

13/7/2022