

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**SUMBAWANGA DISTRICT REGISTRY**  
**AT SUMBAWANGA**

**PC CRIMINAL APPEAL NO. 04 OF 2020**

*(Originating from Criminal Appeal No 01 of 2020 from Sumbawanga District Court  
Criminal Case No. 756 of 2020 at Sumbawanga Urban Primary Court)*

**AMOS <sup>s</sup>/<sub>o</sub> MYULA ..... APPELLANT**

**VERSUS**

**HUSSEIN <sup>s</sup>/<sub>o</sub> RAMADHANI ..... RESPONDENT**

**JUDGMENT**

***Date of Last Order: 27/7/2022***

***Date of Judgment: 17/08/2022***

**NDUNGURU, J:**

This judgment is expert against the respondent because after service he never appeared in court. This is the second appeal. It is originating from Criminal Case No 756 of 2019 from Sumbawanga being dissatisfied with the decision of Urban Primary Court, filed an appeal No. 01 of 2020 at Sumbawanga District Court where the District Court allowed the appeal and quashed the decision of the trial Primary court.

The appellant being aggrieved with the decision of the first appellate court filed this second appeal. In his petition of appeal the appellant raised three grounds of appeal to with:

1. That the appellate court erred in law and fact when without taking into consideration of strong evidence produced in court by the plaintiff during the hearing of the case at Sumbawanga Primary Court decided an appeal in favour of the Respondent unjustly. Further the appellant states that if the evidence produced in Primary Court are clearly gone through by this honourable Court will only find the same proved the case against the Respondent beyond reasonable doubt hence the trial court was correct and just continue convicting the respondent. The copy of proceeding and judgment are attached hereto for easy court reference.
2. That the appellate court wronged in its decision by releasing the Respondent from jail custody without first properly going through the trial court's proceedings and evidence of the Appellant during the trial in criminal case No. 756 of 2019 which by itself is clear and suffice for the court to find the Respondent guilty of the offence of stealing animal as he stoop charged

with but to favour the respondent the appellate court proceeded itself to a wrong decision

3. That the appellate court erred in Law and fact when quashed the judgment and set aside sentence of the Trial Court basing only on a very weak grounds of appeal in connection from the very weak defence evidence made by the respondent without taking into consideration of cogent evidence of the Appellant thus reaching to wrong finding and decision.

Before the Primary Court the appellant was the complainant, where the respondent was charged for the offence of Animal stealing contrary to section 268 (1) and (3) of the Penal ( Cap 16 RE 2002~). That upon trial the court found the respondent guilty, convicted and sentenced her to five year imprisonment.

It was stated that on 30/08/2019 at about 08.00 hours at Kanondo area, Sumbawanga municipal the respondent with one Asajile s/o Peter @ Mwaisa did steal one pig valued at 600,000/= the property of the appellant one Amos s/o Myula. That before the trial court the prosecution had five witnesses and tendered various items/clothes as exhibit.

At the trial court, the appellant was a key witness and testified as SM1. His evidence was rather short. He told the court that 30/08/2019

when he woke up in the morning found the 6 pig pen (hog born) (banda/zizi) broken and one big pig was missing he then started tracing. He went at Mazwi area where he was told one guy was selling the pig. That he was told that the guy had hired a room at Mazwi Guest. He went at the divest but did neither find the guy nor the pig he then reported the matter to the police station where he later was told his culprit has been arrested.

The evidence of SM11 one it 496 PC Motisha was that he was assigned a file to investigate on the theft of boar (Nguruwe dume) the complainant was one Amos s/o Myula (the appellant). His evidence was that he got information from the 2<sup>nd</sup> accused (not part in this appeal) that one guy is selling a pig at Mazwi area and the guy has hired the room at Mazwi Guest. That he went to the said Guest but found the guy had left the place. The evidence of SM III and SM IV was to the effect that they were with the policemen looking for the thief and when went to Uhuru Guest found the appellant to have already escaped.

That SM V told the court that he is the owner of Uhuru Guest located at Mazwi. In his evidence he denied to have known anything SMIV is the guest attendant who told the court that the respondent was the customer as he hired the room. That the respondent had requested him to take his pig at the tree around the guest saying the pig has

broken the leg. He said later he took the said cattle and escaped leaving behind some of his property.

The SM VII testified to had bought the pig from the respondent. In his defence the respondent denied to have sold the pig to the SM VII.

From that piece of evidence, the trial Primary Court found the respondent guilty, convicted and sentence to five years imprisonment in jail. As far as the standard of proof in criminal case before the Primary Court is the same as provided under section 101 of the Law of evidence Act Cap 6 R.F 2019; That is beyond reasonable doubt. **Regulation 1(1) of the Magistrates' Courts** (Rules of evidence in Primary Courts) Regulations 1964 GN. No. 22 of 2064 provides for the standard of proof in criminal case that is beyond reasonable doubt.

The question here is whether the case against the respondent was proved to the standard required by law.

In my reading of the trial court's judgment, the respondent's conviction was based on circumstantial evidence. Paragraph 3 at page 6 of the trial court's typed judgment reads "Hoja hii imegemea katika ushahidi wa mazingira ....." The law on circumstantial evidence is trite that to sustain a conviction on circumstantial evidence, the evidence must irresistibly point to the guilty of the appellant. This point

has been expressed in various statement different authorities to mention but a few:

**Ally Bahau, Pili Bahau Vs. Republic (1992) TLR 10 (CAR), Hassan Fadhili Vs. Republic (1994) TLR 89 (CA) Republic Kiphering Arap Koske & Another (1949) 16 EA CA 135 and Juma Salumu Singano V. Republic Criminal Appeal No 172 of 2008 CAT (Unreported).**

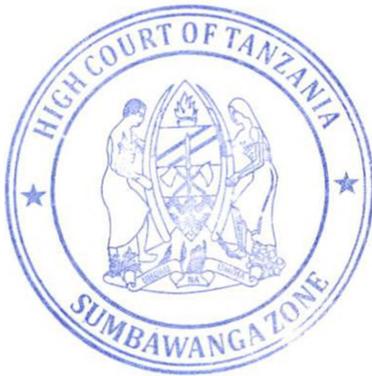
Going back to the evidence on record, the fact that the pig was stolen is not in dispute but what is in dispute is whether the evidence on record irresistible points to the guilty of the respondent.

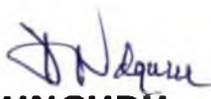
The evidence on record reveals that the pig was stolen at night, the said night was not recovered. But SM1 who is the complainant did not give description of the pig. Though the evidence of SM VII is to the effect that he bought the pig from the respondent, worse still the said witness fill into the hole like SM1 by failure to give specific description of the pig he alleged to have purchased from the respondent. Failure of SMI to give description make it difficult for the court to create a link between the said stolen pig and that which SMVII alleged to have purchased from the respondent. In this case identify description was very important. See **Nikandael Fredenko Vs. Republic** Criminal Appeal No. 35 of 1995 CAT of Mwanza Unreported.

That being the position I am at one with the first Appellate court to hold that the case against the respondent was not proved to the standard required by law.

In the premises, I dismiss the appeal for being devoid of merit.

It is so ordered.



  
**D.B. NDUNGURU**

**JUDGE**

**17/08/2022**