

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

(PC) CRIMINAL APPEAL NO 12 OF 2021

(Originating from PC Criminal Appeal No 26 in the District Court of Musoma at
Musoma, Cr. Case no 65/2021 Kukirango Primary Court)

SARAH MANYAMA APPELLANT

VERSUS

GETRUDA MATEKO RESPONDENT

JUDGMENT

9th & 31st August, 2022

F. H. MAHIMBALI, J.

The respondent in this case was convicted by the trial court for an offence of stealing one sewing machine – butterfly make belonging to the appellant. The respondent successfully challenged it before the District Court of Musoma (first appellate court) which acquitted the respondent and set her free. This aggrieved the appellant, thus the basis of the current appeal basing on the following grounds of appeal:

- 1. That, the Magistrate misdirected himself when he failed to evaluate and consider well evidence of SM1 and SM2 hence convict the respondent on charge she was facing.*

2. That, the Court ought to have considered prosecution evidence more so the evidence of being found with recent stolen property 'MC2' therefore it would have convicted and sentenced the respondent according to the law.

3. That the court erred in fact that the incidence occurred on 09/12/2021 the date which we have not yet reached up to date (see page 2 of the judgment)

During the hearing of the appeal, both parties represented themselves. The appellant on her part first prayed to adopt her grounds of appeal to form part of her submission and added that the dates in the said appeal judgment are not clear as the trial magistrate has confused dates. She clarified that her properties (including the sewing machine) were stolen on 13/5/2017. She reported the incidence at her local leaders (Hamlet leaders) and later to Police. After her investigation, she came to find that the said sewing machine had been under use by someone called Monica who was hired it by the respondent. After all this, the case was then filed at Primary court where the respondent was charged and convicted. She wondered why the District Court acquitted her. She then prayed that this appeal be allowed as she had rightly described her properties prior and after the respondent's arrest.

On her part, the respondent submitted that the appellant's evidence in this case at Primary court is short of range. At first this appellant sued Monica via **Criminal Case no 221 of 2020** (but not so sure with the case number). After she had failed to discharge her burden against Monica, the case was dismissed for want of proof. She then sued her where then she was convicted and sentenced. She appealed before District Court where her appeal was allowed.

She maintained her testimony at the primary court that the said sewing machine (Butterfly) is hers as she had inherited it from her deceased father from 2016. She had then been using it since then. The said Monica is the person she had given the sewing for sewing purposes. What the appellant submitted is not holding water and it is not supported by evidence.

In her rejoinder submission, the appellant submitted that if the respondent inherited this sewing machine from her father, there is no one of the family members who testified on that. He prayed that her appeal be allowed as this respondent is her thief.

I have digested the testimony of the appellant at the trial court and that of the respondent in line with their submissions in appeal. The central issue for consideration should have been one, who between the

appellant and the respondent is the rightful owner of the said sewing machine – butterfly make. Whereas the appellant claims it to be hers as she had bought it from Rhobi Juma Zabroni on 17th April 2017 (Exhibit A2) and, the respondent too claims it to be hers as she inherited it from her father following her death since 1996 (Exhibit B1).


Was there proof of the said sale and inheritance? In my digest to the testimony of the appellant, I am persuaded that she had really bought it. The testimony of SM1, SM2 and exhibits A1, A2 and A3 explain how the appellant purchased the said machine and reported its stealing to the local leaders and later police. The concern by the respondent that she had inherited it from her father, failed to provide relevant evidence to substantiate such claims. A mere saying is just an empty word that can hardly be relied. As exhibit B1 appears to be attended by 21 clan members, none gave testimony to that fact.

In my considered view, the trial magistrate rightly convicted the respondent on the alleged theft of butterfly machine applying the doctrine of recent possession (See **Mohamed Hassan @ Said Vs. Republic**, Criminal Appeal No. 410 of 2015, and **Kadumu Gerude Vs. Republic**, Criminal Appeal No. 183 of 2015).

That said, the appeal succeeds. Conviction and sentence by the trial court are hereby upheld. The appellant to remain with the possession of the said sewing machine – butterfly.

DATED at MUSOMA this 31st day of August, 2022.




F. H. Mahimbali

Judge

Court: Judgement delivered this 31st day of August, 2022 in the presence of both parties and Mr. Gidion Mugo, RMA.



F. H. Mahimbali

Judge