

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
BUKOB A DISTRICT REGISTRY  
AT BUKOB A**

**CRIMINAL APPEAL NO. 30 OF 2022**

*(Arising from Ngara District Court in Criminal Case No.164 of 2021)*

**HUSSEIN s/o ANTONY@MONDAY-**

**MUSTAPHA s/o ANDREA**

**WILBERT DISMASS@MABADILIKO**

}

**..... APPELLANTS**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

*23/09/2022 & 04/10/2022*

*G.N. ISAYA, J.*

The appellants were charged in the District Court of Ngara at Ngara (Henceforth the "trial court") with the offence of armed robbery contrary to section 287A of the Penal Code Cap 16, (R.E.2019). After a full trial, they were all convicted and sentenced to 30 years imprisonment. They were aggrieved with both conviction and sentence, hence the appeal in this court.

The particulars of the offence as per charge sheet, is that on the 7<sup>th</sup> day of August, 2021 at night hours at Mayenzi Village Ngara District in Kagera Region, the appellants did steal cash money valued at 600,000/=(six hundred thousand shillings), the property of Musabaha s/o Siliakus and during such stealing were armed with bush knife and immediately before



and after such a stealing, did use bush knife to cut the victim's head and neck in order to obtain and retain the said money.

Aggrieved, the appellants herein have challenged the decision of the trial court with 11 grounds of appeal of which are needless to reproduce them here since all grounds are engulfed in one major complaint that the case at the trial court was not proved beyond reasonable doubt to sustain conviction and sentence passed.

Invited to elaborate on the grounds in the memorandum of appeal, being lay persons, the appellants had nothing useful to add than praying this court to consider their grounds of appeal as crafted in the memorandum of appeal. This necessitated this court to invite Mr. Amani Kilua, the State Attorney for the Republic to elaborate on the grounds.

Mr. Kilua outrightly and candidly supported the appeal and challenged the conviction entered by the trial court on the major crucial legal issue of identification. He submitted that since the incident took place at night, the identification was therefore not water tight. He supported his stance with the cases of **Raymond Francis vs R** (1994) TLR 100 and **Elias Gervas and 4 others vs The Republic** Criminal Appeal No.308 of 2018 where the Court of Appeal held that the condition favouring correct identification is of utmost importance. Also, the land mark case of **Waziri Amani vs R**, (1980) TLR 250. He referred me to page 21 at para 18. That the light stated was electricity without stating or explaining the intensity of light. The time which the accused stayed there was not stated. That it was not stated whether there was impediment to hinder the identifier. He ended by not supporting the conviction and the sentence meted out.



I painstakingly read the judgment of the trial court, the issue for determination is whether the bandits were properly identified.

In **Waziri Amani V.R.** [1980] TLR 250 (CAT) it was held that:

*"It is now settled that the evidence of identification is the weakest kind of evidence and that courts of law should not rely on it unless it is satisfied that it is water tight. Particularly, one must consider conditions such as the time spent in observation; distance between the assailants and the identifier, source and brightness of light as well as whether there were impediments at the scene of crime or not".*

In **Chacha Jermiah Murimi and 3 Others vs Republic**, Criminal Appeal No. 551 of 2015 the Court of Appeal faced akin situation on the identification of 2<sup>nd</sup> appellant. The Court stated that:

*Admittedly, evidence of visual identification is of the weakest kind, and no court should base a conviction on such evidence unless it is absolutely watertight; and that every possibility of a mistaken identity has been eliminated.*

Also, in **Juma Hamad vs Republic** Criminal Appeal No. 141 of 2014 which was quoted with approval in **Abdul Ally Chande vs Republic** Criminal Appeal No. 529 of 2019 the Court of Appeal stated that:-

*When it comes to the issue of light, clear evidence must be given by the prosecution to establish beyond reasonable doubt that the light relied on by the witnesses was reasonably bright to enable identifying witness to see and positively identify the accused persons.*

See also; **Lusungu Duwe vs Republic** Criminal Appeal No. 76 of 2014;  
**Baya Lusana vs Republic** Criminal Appeal No. 593 of 2017;

Un-hesitatively, I shake hands with Mr. Kilua that the conditions favouring identification as set by this court and the Court of Appeal in a line of



authorities, must be stated before the accused is found guilty of the charged offence. In the instant case, PW1 and PW2 simply stated that there was electricity without stating or explaining the intensity of that light. Again, PW1 was inside when the culprits entered and PW2 came later responding the alarm but remained outside with the victim's wife but all those witnesses did not state for how long the fracas ensued neither did they stated for how long they remained with the culprits under observation. Similarly, it was not stated whether there was no impediment to hinder PW1 and PW2 as the identifiers to properly or clearly identify the accused.

I am inclined to agree that the identification was not water tight, hence, no proper identification.

All said, this court is of the humble view that the prosecution case was not proved to the hilt. I therefore quash the conviction entered and set aside the sentence meted out and I hereby order the accused to be released from prison forthwith unless held for another lawful cause.

It is so ordered.



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**G. N. ISAYA**

**JUDGE**

**04/10/2022**

**Court:** Judgment delivered this 4<sup>th</sup> day of October, 2022 in the presence of Mr. Amani Kilua, the State Attorney for the respondent, the Appellants, Hon. Audax Vedasto, the Judge's Law Assistant and Ms. Grace Mutoka, B/C.

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**G. N. ISAYA**

**JUDGE**

**04/10/2022**

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