

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**CRIMINAL APPEAL NO. 152 OF 2021**

*(Arising from the judgment of Criminal Case No. 67 of 2021 of the District Court of Misungwi before Hon. E.R  
Marley SRM, dated 17<sup>th</sup> August, 2021)*

**DEUS S/O WILLIAM..... APPELLANT**

**Versus**

**THE REPUBLIC .....RESPONDENT**

**JUDGMENT**

*22<sup>nd</sup> August & 17<sup>th</sup> November, 2022*

***Kahyoza, J.:***

**Deus s/o William** and **Emmanuel Elias** were arraigned before the district court charged with the offence of robbery contrary to sections 285(1) and section 286 of the Penal Code, [Cap. 16 R.E. 2022] (the Penal Code). After full trial, the district court convicted **Deus s/o William**, the appellant and his co-accused with the offence of robbery and sentenced them to serve an imprisonment sentence of 15 years.

Aggrieved by both conviction and sentence, **Deus s/o William**, the appellant appealed to this Court raising ten (10) grounds of appeal. I will confine myself to the tenth ground of appeal, which, is a general ground of appeal, covering all specific grounds of appeal one (1) to nine (9). It is the position of the Court of Appeal that, where an appellant raises a general ground of appeal together with specific, it is proper for the

appellate court to consider the general ground of appeal only to determine the appeal. The Court of Appeal pronounced that position of the law in **Rutoyo Richard vs R.**, (Cr. Appeal No.114 of 2017), published on the website, [www.tanzlii.org](http://www.tanzlii.org) [2020] TZCA 298, where it stated that: -

*"Although we find it not to be a good practice for an appellant who has come up with specific grounds of appeal to again include such a general ground, but where it is raised as was the case in the present case, it should be considered and taken to have embraced several other grounds of grievance."*

The appellant's general ground of appeal is to the effect that **the case against him was not proved beyond reasonable doubt**, hence he prayed this Court to quash the Conviction, set aside the sentence and set him free. Thus, the appellant's grounds of appeal raised one basic issue to for determination, whether the prosecution proved the appellant guilty beyond reasonable doubt.

**Did the prosecution prove the appellant guilty beyond reasonable doubt?**

A brief background is that, the appellant with his friend one **Emmanuel Elias** jointly and together on 26<sup>th</sup> April, 2021 at night time at Misungwi Village within Misungwi District, did steal Tzs. 540,000/= the property of one **Anthony s/o Emmanuel** (the victim) and before

stealing, the accused person did use actual violence to obtain and retain the said money.

The appellant and his co-accused denied the allegations.

The prosecution summoned three witnesses to prove that the appellant and his co-accused guilty of the offence robbery. The accused persons defended themselves on oath.

The prosecution evidence of both Anthony Emmanuel (**Pw1**), the victim and Juma Athuman (**Pw2**) was that, on 26<sup>th</sup> April, 2021 at around 21:00 while Anthony Emmanuel (**Pw1**), was taking stock at his business premises, the appellant and his co-accused entered and started punching him. They took a bag which had Tzs. 340,000/=, stole Tzs. 180,000/= from his pockets and disappeared. Both, Anthony Emmanuel (**Pw1**), the victim and Juma Athuman (**Pw2**) testified further that the appellant and his co-accused person were familiar to them. They knew them before the incident.

Anthony Emmanuel (**Pw1**) reported to police. Later, police arrested the appellant and his co-accused person. H. 81 D/C Michael (**Pw3**) interrogated the appellant and his co-accused person. H. 81 D/C Michael (**Pw3**) wrote the caution statement of Emmanuel Elias (**Dw2**), the appellant's co-accused, who admitted to commit the offence. H. 81 D/C

Michael (**Pw3**) deposed that the second accused person admitted to rob the victim together with the appellant.

The appellant and his co-accused refuted to have robbed the victim. Emmanuel Elias (**Dw2**) further explained that, he was forced to write a caution statement.

It is settled law that when an accused is charged with offence of robbery, the prosecution must prove that the accused at or immediately before or immediately after used actual or threatened to use actual force to a particular victim. The Court of Appeal in **Kashima Mnadi vs R.**, Criminal Appeal No. 78 of 2011 (unreported) amply expounded on ingredients of charges of robbery as follows-

*"... Strictly speaking for a charge of any kind of robbery to be proper, it must contain or indicate actual personal violence or threat to a person targeted to be robbed. **So, the particulars of the offence of robbery must not only contain the violence or threat but also on whom the actual violence or threat was directed.** The requirement is provided under section 132 of the Criminal Procedure Act, Cap 20 R.E 2002 so that to enable the accused person know the nature of the offence he is going to face."*

This Court's task is to find out whether the prosecution proved the appellant guilty beyond reasonable doubt. The prosecution had a duty to prove that the appellant and his co-accused person before or at or after

the time of stealing Tzs. 540,000/=, used or threatened to use actual violence against **Anthony s/o Emmanuel** (the victim) in order to obtain or retain the said money or to prevent or overcome resistance to its being stolen or retained. That is the requirement of section 285 (1) of the Penal Code, which provides that-

*(1) Any person who steals anything and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of robbery.*

The prosecution evidence depicted that the offence was committed when dark had set in. It is further on record that **Anthony s/o Emmanuel (Pw1)** and Juma Athuman (**Pw2**), knew the accused persons before the fateful night. It is on the record that, on the fateful night the accused persons arrived at **Anthony s/o Emmanuel (Pw1)**'s office, sat on the bench for a while and **Anthony s/o Emmanuel (Pw1)** and Juma Athuman (**Pw2**) saw them. Lights were on. Suddenly, the accused persons attacked **Anthony s/o Emmanuel (Pw1)** and started punching him and stole his money.

**Anthony s/o Emmanuel (Pw1)** and Juma Athuman (**Pw2**) identified them by the assistance of electricity light which was on. H. 81

D/C Michael (**Pw3**) stated that the second accused admitted to commit the charged offence together with the appellant. The second accused person did not object the caution statement to be admitted in evidence. The second accused person sought to challenge the caution statement while defending himself.

It is trite law that if an accused person intends to object to the admissibility of a statement or a confession, he **must do so before it is admitted and not during cross-examination or during defence**. See the case of **Shihoze Semi and Another v. Republic** (1992) TLR 330. I am also alive of the position of the Court of Appeal in the case of **Nyerere Nyague Criminal Appeal No. 67 of 2010** (CAT-Unreported) where it held that-

*"...a confession or statement will be presumed to have been voluntarily made until objection to it is made by the defence on the ground either it was involuntarily made or not made at all."*

I am aware also of the settled principle of law that an accused person who confesses to commit a crime is the best witness. The said principle was pronounced in the cases of **Jacob Asegelle Kakune v, The Director of Public Prosecutions**, Criminal Appeal No, 178 of 2017 and **Emmanuel Stephano v. Republic**, Criminal Appeal No. 413 of

2018 (both unreported). Specifically, in **Emmanuel Stephano** (supra) the Court while reiterating the above principle stated that-

*" We may as well say it right here, that we have no problem with that principle because in a deserving situation, **no witness can better tell the perpetrator of a crime than the perpetrator himself who decides to confess.**"*

In addition, the appellant did cross-examine the victim regarding the evidence that they entered his business premises, sat, assaulted him and stole his money. It is trite law that that failure to cross examine on a vital point, ordinarily, implies acceptance of the truth of the witness evidence; and any alarm to the contrary is taken as an afterthought if raised thereafter. See **Cyprian Kibogoyo Vs Republic**, Criminal Appeal No 88 of 1992; CAT DSM (unreported), **Issa Hassan Uki Versus Republic**, Criminal Appeal No 129 of 2017 (unreported); and, **Martin Misara Versus Republic**, Criminal Appeal No 428 of 2016 (unreported). The appellant's failure to cross-examine **Anthony s/o Emmanuel (Pw1)** and Juma Athuman (**Pw2**) is tantamount to accepting the evidence that he (the appellant) and his co-accused person entered **Anthony s/o Emmanuel (Pw1)**'s business premises, sat assaulted him and stole his money. There is ample evidence against the appellant. **Anthony s/o Emmanuel (Pw1)** and Juma Athuman (**Pw2**) recognized the appellant as one of the assailants. **Anthony s/o Emmanuel (Pw1)**

and Juma Athuman (**Pw2**) knew the appellant before the fateful date not only that but also there was enough light from the electricity. **Anthony s/o Emmanuel (Pw1)** deposed that he was running lottery business at a place he was assaulted and robbed.

I find that the prosecution proved its case beyond reasonable doubts elements of robbery with violence. **Anthony s/o Emmanuel (Pw1)** and Juma Athuman (**Pw2**), properly identified the appellant and his co-accused person. The evidence of **Anthony s/o Emmanuel (Pw1)** and Juma Athuman (**Pw2**) corroborates the appellant's co-accused person's confession, Exh.P.1. Thus, on the evidence on record, I find without hesitation that, the prosecution evidence proved beyond reasonable doubt that the appellant committed the offence with Emmanuel Elias.

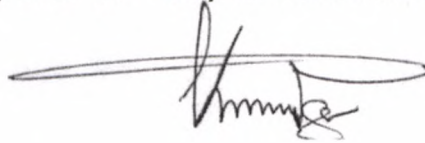
I considered the sentence the trial court imposed of 15 years' imprisonment for the offence of robbery under section 285(1) read with section 286 of the Penal Code and found it proper. Thus, the trial court properly passed a sentence of 15 years' imprisonment. Section 286 of the Penal Code reads-

*"286. Any person who commits robbery is liable to imprisonment for **fifteen years**."*



In the end, find the appeal without merit and dismiss it in its entirety. I uphold both, the conviction and sentence of fifteen years' imprisonment imposed by the trial court.

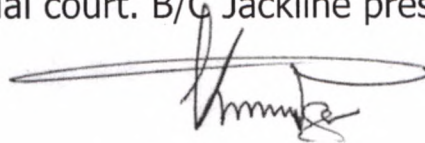
Dated at Mwanza, this 17<sup>th</sup> day of November, 2022.



**J.R. Kahyoza**

**Judge**

**Court:** Judgment delivered in the virtual presence of Ms. Tibilengwa, the Respondent's state attorney and in the absence of the appellant who could not connect to the virtual court. B/G Jackline present virtually.



**J.R. Kahyoza**

**JUDGE**

**17/11/2022**

