

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOROGORO DISTRICT REGISTRY)  
AT MOROGORO**

**CRIMINAL APPEAL NO. 33 OF 2022**

**(Originating from the Decision of the District Court of Kilosa, in  
Criminal Case No. 39 of 2013)**

**AMOSI S/O HERI ..... APPELLANT  
VERSUS  
THE REPUBLIC ..... RESPONDENT**

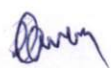
**JUDGMENT**

**30<sup>th</sup> November, 2022**

**CHABA, J.**

Before the District Court of Kilosa, at Kilosa, the appellant, Amosi Heri, was charged with an offence of armed robbery contrary to section 287A of the Penal Code [Cap. 16 R. E, 2022]. It was alleged by the prosecution that on 17<sup>th</sup> day of October, 2012 at Kitundwe, Dakawa Ward within Kilosa District in Morogoro Region, the appellant did steal money and other properties belonged to Lidya Daudi valued at Tsh. 315,000/=.


At the end of the trial, the appellant was convicted and sentenced to serve thirty (30) years imprisonment. Aggrieved, the appellant preferred this appeal armed with nine grounds of appeal which I won't reproduce them for reasons which I will unveil shortly.



When the appeal was called on for hearing on the 10<sup>th</sup> day of November, 2022, the appellant appeared in person, unrepresented whereas Mr. Emmanuel Kahigi, the learned State Attorney, entered appearance for the Respondent / Republic.

On his part, the appellant, being a layman, had nothing to argue in support of the appeal. However, he prayed for the court to consider his grounds of appeal and set him free from prison custody.

The Respondent / Republic represented by the learned State Attorney, readily supported the appeal reasoning that the prosecution did not prove the case against the appellant before the trial court beyond reasonable doubt. Bolstering his contention, the learned State Attorney submitted that the evidence adduced by the prosecution witness did not satisfy the ingredients of the offence of armed robbery as the law requires.

The Respondent / Republic also submitted that the incidence took place during the night but the question of identification was not well determined by the trial court. He submitted further that, the relevant principles enunciated in the case of **Amani Waziri vs. the Republic (1980) TLR, 250** was not complied with. 

The learned State Attorney contended that, PW2 testified that she managed to identify the culprit with the aid of solar energy, however she failed to explain the intensity of the light. On top of that, PW2 did not explain how she managed to identify the culprit. On his part, the appellant insisted and asked the court to consider his grounds of appeal and set him free.

This court, supported by a bundle of precedents, is in total agreement with the arguments advanced by the learned State Attorney in respect of the appellant's grounds of appeal.

The law governing evidence of visual identification is now well settled by our Apex Court in Tanzania. Through its several decisions, the Court of Appeal of Tanzania has underscored the principles governing visual identification starting with a landmark case of **Waziri Amani** (Supra) and further expounded the same principle through various decisions including the followings: the case of **Rashid Seba vs. Republic**, Criminal Appeal No. 95 of 2005 (CA) at Mwanza- [Lubuwa J.A. Mroso J.A., and Rutakangwa J.A.] where the Court explicated the importance to elaborate on the quality of the lamp alleged to assist the victim visualise and identify the culprit. In another case of **Said Chaly Scania vs. R**, Criminal Appeal No. 69 of 2005, the Court of Appeal of Tanzania was very clear that visual



identification at night is by any standard an unfavourable circumstance requiring evidence which leaves no doubt that identification is correct and reliable. The Court held:

*"We think that where a witness is testifying identifying another person in unfavourable circumstances like during the night, he must give clear evidence which leaves no doubt that the identification is correct and reliable. To do so, he will need to mention all the aids to unmistakable identification like proximity to the person being identified, the source of light, its intensity, the length of time the person being identified was within view and also whether the person is familiar or a stranger."*

In the present appeal, the record shows that PW2 did not describe the intensity of light she relied on to identify the accused. From my re-evaluation of evidence, I am satisfied that the visual identification of the appellant at the scene of crime was not properly done. As I pointed out earlier, it is clear that the prosecution failed to prove their case beyond reasonable doubt, and in the circumstance, I found it pertinent not to reproduce the grounds of appeal for obvious reason.

Consequently, the appellant's appeal is hereby allowed. The conviction and the purported sentence of fifteen (15) years imprisonment on the offence of armed robbery, are hereby quashed and set aside accordingly. The Appellant, AMOSI S/O HERI shall be released forthwith from prison unless there was a lawful cause to the contrary. **It is so ordered.**

**DATED** at **MOROGORO** this 30<sup>th</sup> day of November, 2022.



  
**M. J. CHABA**

**JUDGE**

**30/11/2022**