

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

**AT MWANZA**

**HC CRIMINAL APPEAL NO. 125 OF 2021**

(Appeal from the judgment of Bukombe District Court in Criminal Case No. 87/2020)

**LUCAS S/O DANIEL..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**JUDGMENT**

22/9/2022 & 21/10/2022

**ROBERT, J:-**

The appellant, Lucas Daniel, was arraigned before the District Court of Bukombe on allegations of stealing by agent contrary to section 273(b) of the Penal Code [Cap 16 R.E 2019]. After a full trial, the trial court was satisfied that the offence was proved beyond reasonable doubt and proceeded to convict and sentence him to serve five years in jail. Aggrieved, the appellant preferred this appeal challenging the trial court's decision on the following grounds of appeal;

- 1. That the trial Magistrate erred in law and fact to convict the appellant while he pleaded not guilty to the offence of stealing by agent.*
- 2. That the trial Magistrate erred in law and facts to convict the appellant by using evidence given by PW1, PW2, PW3, PW4 and PW5. Their evidences were not enough to convict the appellant.*

- 3. That the trial court erred in law and fact to convict the appellant by using poor evidence brought by prosecution side and that the court convicted the appellant while PW4 G.5914 D/CPL Adrian proved fully in the trial court that the motorcycle was stolen by another person.*
- 4. That the trial Magistrate erred in law and fact to convict the appellant without any proof of the prosecution side that the appellant committed the offence of stealing by agent. In this way, no evidence which proved in the trial court that the appellant committed the offence of stealing by agent.*
- 5. That there was no any conspiracy made by appellant in order to steal motorcycle of the appellant that is why the appellant reported the matter at police station and to the complainant and that the appellant always paid Tshs 45,000/= per week.*
- 6. That the trial Magistrate erred in law and fact to convict the appellant by using the judgment which is not proper and that there is a contradiction of the date on 4<sup>th</sup> April 2019 while the witnesses said to be on 4<sup>th</sup> April 2020.*

This appeal was argued orally. The appellant appeared in person without representation whereas the respondent was represented by Mr. Jaines Kihwelo, learned State Attorney.

When the appellant took the floor to address the Court on his grounds of appeal he simply prayed for the grounds stated in his petition of appeal to be adopted and examined by the court when determining the appeal.

In response to his grounds of appeal, the respondent through Ms. Kihwelo informed the Court at the outset that the respondent is supporting this appeal on the general ground that the prosecution did not prove the case against the appellant beyond reasonable doubt.

She submitted that the appellant being a person entrusted by the owner of a motorcycle to use the same for commercial transportation popularly known as "bodaboda" informed the owner on 4/4/2020 that the motorcycle was stolen. Both of them went to the police station to report the matter. However, he was apprehended at the police station and charged with stealing by agent under section 273(b) of the Penal Code, (Cap. 16 R.E.2019).

She argued that, based on the testimony of PW2 which was relied on to enter conviction, on the day of the alleged theft he took the said motorcycle and left with another person to purchase timber. They left the appellant cleaning the house of that man. The said man later disappeared with the said motorcycle when he was with PW2. However, PW2 was of the view that the appellant and the man who disappeared with the motorcycle knew each other. She maintained that this testimony was too weak to ground conviction because it was based on suspicion thus it could not form the basis of conviction. She cited the case of **Hakimu Mfaume**

**vs Republic**, TLR (1984) at page 201 in which it was stated that suspicion however strong cannot ground conviction.

She submitted further that, the other piece of evidence that was relied on by the trial court to enter conviction was the appellant's cautioned statement which was admitted as Exhibit P1. She argued that in the said statement the appellant admitted that he was given the said motorcycle by PW1 but stated that the motorcycle was stolen by another person. He did not admit to stealing the motorcycle as alleged. She cited the case of **Juma Magori Patrick & 4 Others vs Republic**, Criminal Appeal No. 328 of 2014 at page 9 (unreported) where the Court held that for a confessional statement to be considered as proof of a commission of an offence against its maker, it must not only be made freely and voluntarily but also be nothing but the truth.

She argued that, in criminal cases, conviction of an accused person is based on the strength of the prosecution case not the weakness of the defence. She maintained that in this case the prosecution did not bring sufficient evidence against the appellant.

From the submissions and records of this appeal, the question for determination is whether the prosecution presented sufficient evidence to

prove the offence of stealing by agent under section 273(b) of the Penal Code.

I must hasten to point out, as rightly submitted by the learned State Attorney, that evidence adduced in this case fell short of being sufficient to establish the offence charged. It is from the records that the appellant was charged with the offence of stealing by agent. However, there was no evidence to establish the appellant's involvement in the commission of the offence or to prove that he was the one who actually stole the said motorcycle. Evidence indicates that at the time of taking the said motorcycle the appellant was not there but PW2. It was therefore not right for the trial Court to convict the appellant based on the evidence of PW2 which was built on suspicion that the appellant and the person who disappeared with the motorcycle knew each other, thus casting the blame on the appellant.

Another reason that merits this appeal, as correctly argued by the counsel for the respondent, is the trial court's reliance on the appellant's cautioned statement which did not contain his confession to the offence charged. In the case of **Jumanne Ahmad Chivinja & Another vs Republic**, Criminal Appeal No. 371 of 2019 (reported on TanzLII) in

which the court reproduced a paragraph from the case of **Rhino Migere vs Republic**, Criminal appeal No. 122 of 2002 it was held that;


*"For a statement to qualify for a confession it must contain the admission of all the ingredients of the offence charged as provided for under section 3(c) of the Evidence Act, 1967"*

Guided by the cited authority, this Court finds that the appellant's cautioned statement did not qualify as proof of his confession for the offence charged. The statement lacked necessary ingredients of the offence of stealing by agent.

On the basis of what I have endeavoured to discuss above, this Court finds and holds that the prosecution failed to prove the case against the appellant beyond reasonable doubt. I therefore proceed to quash conviction and set aside the sentence meted out against the appellant by the trial Court. I order for immediate release of the appellant from prison unless he is being held for other lawful reasons.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
21/10/2022