

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
CRIMINAL APPEAL NO. 36 OF 2021**

DWASI MKINGA @ KOMANYAAPPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

(Appeal from the decision of Bariadi District Court)

(C.E.Kiliwa,SRM)

Dated the 4th day of March,2021

In

Criminal Case No.65 of 2020

JUDGMENT

01 & 03 March, 2022

A. MATUMA, J.

The Appellant Dwasi s/o Mkinga @ Komanya stood charged in the District Court of Bariadi District at Bariadi of an armed robbery case contrary to section 287A of the penal Code, Cap. 16 RE. 2019.

He was alleged to have on the 8th May, 2020 during night hours robbed the victim Nilah s/o Igombe Tshs. 300,000 and used a panga to assault the said victim in order to retain the stolen money. During hearing of the case at the trial court, the prosecution arraigned four witnesses the victim (PW1), Magembe Mayenga (PW2), Mohamed Abas (PW3) and D/sgt James (PW4).

The Appellant entered his defense alone without calling any witness nor tendering any exhibit.

After the conclusion of the trial, the learned trial magistrate found the Appellant guilty of the offence, convicted him and sentenced him to suffer thirty years jail term.

The Appellant being aggrieved with the conviction and sentence opted to file this appeal with three grounds mainly complaining that;

- i. ***He was not properly identified.***
- ii. ***That he was wrongly convicted as the provisions of the law were not complied.***

At the hearing of this appeal, the Appellant appeared in person while the Respondent Republic was represented by Salome Mbughuni, Senior State Attorney. The Appellant had nothing to submit regarding to his grounds of appeal rather than praying his appeal be considered and determined in his favour according to his grounds of appeal.

The learned Senior State Attorney for the Respondent Republic, in her submission, supported the appeal. She argued that, according to the record of the trial court, Section 211(1) of the Criminal Procedure Act Cap.20 R.E 2019 was contravened. That the evidence of PW3 and PW4 was given in the absence of an interpreter while it is on record that he was not conversant with Swahili Language. To her, the Appellant was denied the right to be heard when the evidence of PW3 and PW4 was taken. She cited the case of ***Dastan Makwaya and Jovith Mtagaywa***

Jovin V. The Republic, Criminal Appeal No.179 of 2017 to support her point that failure to comply with section 211(1) of the CPA is fatal.

She further submitted on the issue of identification of the appellant. She argued that the identification of the Appellant depended solely on the evidence of the victim alone. The victim named the Appellant as among the people he identified at the crime scene being familiar to him. She submitted that despite the victim to have mentioned the source of light (torch) which enabled him to identify the assailants, she did not state the intensity of such light. Relying on the decision in the case of ***Felix Lazaro V. Republic, Criminal Appeal No.41 of 2003***, the learned State Attorney argued that although the Court of Appeal accepted torch light as among good source of light for the purposes of identification, it held that the intensity of such light must be stated. She also cited; ***Vumilia Daudi Temi V. Republic, Criminal Appeal No.246 of 2010***, and ***Emmanuel Chigoji V. Republic, Criminal Appeal No. 355 of 2018*** to that effect.

Having been probed by the court on whether the victim named the appellant to the people who rescued him that night and spend with him the whole night with him until the next day when they escorted him to police, the learned Senior State Attorney quickly pointed out that the

victim did not name the assailants at the earliest possible time. She thus concluded her submission by urging the court to allow the appeal and the Appellant be acquitted.

Having carefully considered the grounds of appeal by the Appellant, submission of the Respondent and the evidence on record, I find this appeal to have been brought with sufficient cause on both grounds of appeal. I will start with the second set of complaint that the Appellant was convicted without the provisions of the law having been complied with. Although he could not elaborate the ground, I probed the learned Senior State Attorney to address me on whether the provisions of the law relating to interpretations of the language of the court into the language understood by the accused during trial throughout the proceedings were complied with. She submitted as herein above indicated that it was not.

I agree with her. It is on record that on 3/8/2020 when the prosecution was about to call in the witness dock their first witness, the Appellant declared that he was not familiar with Kiswahili language at page 6 of the trial proceedings. The Appellant stated that; ***"I am ready for hearing though I don't know Swahili properly"***

The learned trial magistrate Hon. M. P. Mrio (SRM) called in one Ayubu s/o Ntobi as an interpreter of Swahili language into Sukuma and vice versa. The interpreter was dully sworn for the purpose and the

