

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

CRIMINAL APPEAL NO. 30 OF 2021

*(Originating from Criminal Case No. 84 of 2020 in the District Court of
Nachingwea at Nachingwea)*

HAMZA HAMADI DADI.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

Date of Hearing: 16/03/2022

Date of Judgment: 18/03/2022

JUDGMENT

Muruke, J.

Hamza Hamadi Dadi, was charged and convicted with an offence of stealing contrary to section 258 and 265 of the Penal Code Cap 16 R.E 2019, thus convicted to serve three years imprisonment on 10th February 2021 by the District Court of Nachingwea. Being dissatisfied, he filed present appeal raising 6 grounds of appeal.

On the date set for hearing, appellant was in person, while Principal State Attorney Ndunguru represented respondent. By way of preliminary remarks, he joins hands with appellant that, appeal has merits specifically ground 6, that prosecution did not prove the case beyond reasonable doubts. Weakness in the prosecution is on the identification of motor cycle MC 299 BVW alleged to have been stolen. In all evidence by the prosecution, the motor cycle was not mention at all. Even its



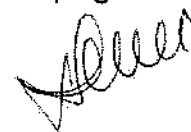
ownership was not mentioned. PW1 Abuu Omari did not mention anything on the registration number and even its ownership. Although appellant was found at scene of crime, yet there was no evidence paraded by prosecution prove the case beyond reasonable doubts.

Evidence of PW1, PW2, PW3, PW4 and PW5 they both mentioned motor cycle without mentioning the motor cycle registration number. Also caution statement of appellant was objected by accused person then, now appellant. But trial court did not do any inquiry in terms of the law. Thus, caution statement must be expunged from the records. In totality there is no evidence to ground conviction argued State Attorney Ndunguru.

It is a settled principle of law that, the burden of proof in criminal cases rest on the shoulders of the prosecution as stated in the case of **Georgy Mwanyigili Vs. The Republic, Criminal Appeal No. 335 of 2016 CAT** (unreported), that;

"We wish to re- state the obvious that the burden of proof in criminal cases always lies squarely on the shoulders of the prosecution, unless any particular statutes direct otherwise. Even then however, that burden is on a balance of probability and shifts back to the prosecution."

As rightly submitted by State Attorney, the prosecution did not prove its case beyond reasonable doubts. At the trial court the prosecution paraded five witnesses, but both of them mentioned the motorcycle without mentioning the motorcycle registration number. At page 9 of the typed proceedings, PW1 was recorded to have said;



“..... we agreed to go to chinongwe dispensary, when we reached then he told me the person who he went after was busy. We have to wait for a while, he then asked for motorcycle to go with it to magengeni but he then disappears with it.”

PW1 was a key witness of the prosecution but he did not give any description of the stolen motorcycle. Failure by PW1 to give description of the stolen property leaves a lot to be desired. In the case of **Hassan Said Twalib Vs. The Republic, Criminal Appeal No. 92 of 2019** (unreported) CAT at Mtwara, court held that;

“The prosecution case was shaky on several aspects. First, the appellant was accused of stealing a motorcycle with the descriptions shown in the charge; that is, a motor cycle makes SANLG, red in colour with Registration No. MC 891 AUH, Engine No. 15922540 valued at Tshs. 1,900,000/=. However, in his testimony, PW1 never gave any description of the stolen item. If anything, he was so casual in his testimony that we think the identity of the stolen item left a lot to be desired.”

Even the remaining witnesses of the prosecution, PW2, PW3, PW4 and PW5 never give any descriptions of the stolen property. Not even one witness testified on the colour of the stolen motorcycle. In cases of this nature, sufficient description of the stolen properties is of paramount important. All witnesses did not mention any special marks to identify the stolen motorcycle to prove that the alleged properties stolen from PW1. In the case of **Kurubone Bagirigwa & 3 others Vs. The Republic,**



Criminal Appeal No. 132 of 2015 (unreported) CAT at Mwanza, court held that;

"With the said shortfalls and in the absence of any peculiar marks on the stolen motor cycle and the distinct engine or Chassis Numbers which were not in the sale agreement, the motor cycle inspection report and the charge sheet, the prosecution miserably failed to prove if the recovered motor cycle found in possession of the appellants belonged to PW1 and was one of the properties robbed."

Definitely, the prosecution has uncompromised duty to prove the case beyond all reasonable doubts. As submitted by State Attorney, failure by the prosecution witnesses to mention anything on the registration number and ownership of the stolen motor cycle, prosecution did not prove the case beyond reasonable doubts. In view of the discussion above, I am on the same line with the State Attorney, this case was not proved to the required standard of the law. This appeal has merits. Thus, I quash the conviction and sentence meted by the trial court. I order the appellant Hamza Hamadi Dadi be released from prison custody unless held with other offence. Ordered accordingly.




Z.G. Muruke

Judge

18/03/2022

Judgment delivered in the presence of W. Ndunguru, Principal State Attorney for the respondent and applicant in person.




Z.G. Muruke

Judge

18/03/2022