

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

**AT SUMBAWANGA**

**DC CRIMINAL APPEAL NO. 37 OF 2021**

(C/O DC Criminal Case No. 60 of 2020 Nkasi District Court)

(Nkomola, B. B., RM)

**JACKSON S/O LUSAMBO ..... 1<sup>st</sup> APPELLANT**  
**YEGELA S/O MADUKA ..... 2<sup>nd</sup> APPELLANT**

**VERSUS**

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

**JUDGMENT**

04 & 04/04/2022

**NKWABI, J.:**

Nkasi District court presided over by Nkomola, B.B. Resident Magistrate, convicted and sentenced the appellants to serve five years imprisonment for cattle theft contrary to section 268 (1) read together with section 265 of the Penal Code, Cap. 16 R.E. That was because the trial court was satisfied that the prosecution had proved its case beyond reasonable doubt against the appellants.

A brief narration of events that unfolded is that in the night of 16<sup>th</sup> July, 2019 at 03:00 hrs the appellants are allegedly did steal 17 heads of cattle the

property of Yuster d/o Njale. PW2 Severine Njali said when he woke up during the night, he found the kraal empty, all cows were missing. He made follow-up through tracing hooves marks. When he approached Lwafi Game Reserve he saw two persons in possession of the cows. He identified Jackson Lusambo and the 2<sup>nd</sup> accused person. Not to endanger his safety, he went back to the sub-village chairperson to report. Investigation was mounted which led to the arrest of the appellants and another person who was acquitted by the trial court. As said above, the appellants were convicted and sentenced accordingly. They maintain their innocence in this appeal.

The appellants' main ground of appeal is that the trial court erred both at law and fact by convicting them on a case which was not proved beyond reasonable doubt. They prayed their grounds of appeal be adopted as part of their submissions.

The respondent Republic, being duly represented by Mr. Simon Peres, learned Senior State Attorney, supported the appeal on the ground among other grounds that the identification of the culprits by PW2 was unsatisfactory as identification was done in the night and did not describe the culprits nor did he say what kind of light he used to enable unmistakable

identification. Further, the alleged cow which is the exhibit in this court was not satisfactorily described to be that of the victim of the offence.

I readily accept Mr. Peres' submission. PW2 who said he identified the culprits during the night did not testify as to what kind of light enabled him to correctly identify the culprits. He also did not describe their appearance.

The identification of the culprits therefore was unsatisfactory at law. The evidence that is in the court record cannot therefore sustain the conviction made by the trial court. My decision, is guided by **Juma Mussa v. Republic**, Criminal Appeal No. 165 of 1991 (unreported) (CAT) (DSM) where it was held:

*"... PW1 did not give any explanation as to how he purported to identify the appellants. The record is completely silent as the features of the appellant.*

*Appeal allowed inter alia due to the above ground."*

For that reason, I allow the appeal, quash the conviction and set aside the sentence against the appellants and the order of the trial court as to the

exhibit (the cow) is too, set aside. I order for the appellants' immediate release from prison unless they are held therein for another lawful cause.

It is so ordered.

**DATED at SUMBAWANGA** this 4<sup>th</sup> day of April 2022.



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi".

J. F. NKWABI

**JUDGE**