

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**RM. CRIMINAL APPEAL NO. 76 OF 2021**

**NJILE S/O PAMBE @ NYOROBI ..... APPELLANT**

**VERSUS**

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

(Appeal from the decision of the Resident Magistrates' Court of Katavi at Mpanda)

(J. S. Musaroche, SRM)

Dated 18<sup>th</sup> day of August 2021

In

Criminal Case No. 38 of 2020

**JUDGMENT**

06/04 & 23/05/2022

**NKWABI, J.:**

The correctness or legality of the decision of the trial court is challenged by the appellant in this court. The appellant was charged with being in possession of goods suspected of having been stolen contrary to section 212(1)(b) of the Penal Code, Cap. 16 R.E. 2002. He pleaded not guilty to all counts. He had been charged together with other five accused persons who, however, did not appeal.

It was alleged that the appellant together with other accused persons on different counts was found in possession of motor cycles the subject of count

number one to count number four in the charge sheet. The same were suspected having all circumstances to have been stolen or otherwise unlawfully acquired. The appellant was sentenced to serve three years imprisonment while the other convicts were sentenced to conditional discharge. Aggrieved by the conviction and sentence, the appellant lodged this appeal.

As it happened, the respondent was able to bring three witnesses and five exhibits which proved its case beyond reasonable doubt. The appellant defended himself and had no witness to bear him out. He has now come to this court with three grounds of appeal seeking this court to decide in his favour and release him from prison. The grounds of appeal are:

1. That the trial court erred at law by convicting the appellant with the offence of possession of goods suspected of having been stolen without proof of theft.
2. That the trial court erred at law by convicting and sentencing the appellant for offences which were not proved beyond reasonable doubt as required at law.
3. That the trial court erred at law and fact by ordering the forfeiture of the four motorcycles without proof that the same were stolen.

During the hearing of this appeal, the appellant entered appearance in court in person, unrepresented. The Respondent was represented by Mr. Simon Peres, learned Senior State Attorney.

In his submission, the Appellant prayed this court to adopt his grounds of appeal as part of his submissions. He thus prayed for justice since he did not commit the offence.

In reply submission Mr. Peres stated that they object the appeal. He argued, under section 312 (1) (b) of the Penal Code, the prosecution has no duty to prove the offence but it is the duty of defence to prove that he obtained the same legally.

Mr. Peres added that they proved their case by the evidence of PW1, PW 2, PW 3 and PW 4. He further noted that in the defence of the appellant, the appellant admitted he sold the motorcycles himself. The Tanzania Revenue

Authority (TRA) report did not show that he was the owner of the motorcycles.

On the 3<sup>rd</sup> ground of appeal which is against the order of forfeiture, Mr. Peres was of the opinion that ground of appeal has no justification because all the accused persons did not object. See page 8 of the judgment. He prayed that the appeal be dismissed.

Reacting to the submissions of Mr. Peres, the Appellant stressed that the motorcycles were his properties but a police officer took his cards in respect of those motorcycles.

I will start considering the 1<sup>st</sup> ground of appeal which is that the trial court erred at law by convicting the appellant with the offence of possession of goods suspected of having been stolen without proof of theft. Mr. Peres argues that after the law enforcers suspected the appellant, it was his duty to prove that the motor cycles were his properties and not he unlawfully acquired. It is thus it was not their duty to prove theft.

To answer this complaint. I will quickly revisit the law. In the case of **Jackson James v. R. [1967] HCD no. 273**, Georges, C.J. held:

*"A conviction cannot be maintained under section 312 if the articles in question can be identified as the property of any known person. If the owner is identified, it is no longer a question of suspicion, and the charge should be laid under a section of the Penal Code dealing with stealing or possession or receiving stolen property. Citing R. v. Msengi s/o Abdallah (1952) 1T.L. R. (R) 107; R. v. Shabani Saidi, 1.T.L.R. (R) 77.*

The above authority makes it clear that once theft is established, then suspicion ceases. In the circumstances, it is not a requirement of the law to prove theft in this case. I accept Mr. Peres' view that it was the appellant who was duty bound to prove that the motor cycles were his properties. He failed to do so. The 1<sup>st</sup> ground of appeal in this appeal is meritless. It is dismissed.

The next ground of appeal for my consideration and determination is the 2<sup>nd</sup> one which is that the trial court erred at law by convicting and sentencing

the appellant for offences which were not proved beyond reasonable doubt as required at law.

The evidence of the prosecution in this case is that PW1 DC Motuli, on 04/05/2020 when on duty, suspected four persons in possession of unlawfully obtained motor cycles. They arrested them and questioned them where they had not motor cycle registration cards. A certificate of seizure was recorded which is exhibit P1 and the motor cycles were also admitted in court without any objection. The appellant did not cross-examine in any substance concerning that he was the lawful owner or that he had the valid registration cards for the motor cycles or that he had copies of contracts where he sold such or any of the motor cycles to any of his co-accused persons. PW2 DC Melkiadi a police officer confirmed the evidence of PW1. He was also not cross-examined by the appellant on anything in substance.

Further, PW3 Matilda, the TRA Manager for Katavi region testified and tendered a report on ownership of the motor cycles which is exhibit P4. The same was admitted without any objection from the appellant and his colleague accused persons in the trial court. The report on chassis number

and engine number was also admitted in court without objection from the appellant. In his defence the appellant denied having committed the offences and said he sold three motor cycles to the 5<sup>th</sup> accused person but the cards were taken by the police.

The trial magistrate did not accept his defence and in my view, properly so. The defence of the appellant is nothing but an attempt to evade the hand of justice. That cannot be accepted. In any way, the appellant was implicated by his colleague accused persons in the trial court. That evidence by co-accused persons is corroborated by the strong evidence from the prosecution side that the appellant was not owner of the motor cycles. Conviction of the appellant on the four offences is well grounded on evidence. The 2<sup>nd</sup> ground of appeal has no merit. It fails.

The last ground of appeal for my determination is that the trial court erred at law and fact by ordering the forfeiture of the four motorcycles without proof that the same were stolen.


I have already determined when I was considering the 1<sup>st</sup> ground of appeal, proof of the offences was not dependent on proof of theft. In the circumstances I am of the view that since the appellant did not prove ownership of motor cycles and indeed one of them shows that was the property of Songea Urban Water and Sewerage Authority, it was proper for the court to order forfeiture of the properties to the government in which case the motor cycle which is the property of Songea Urban Water and Sewerage Authority ought to be handed over to the said authority. I order that the motor cycle the property of Songea Urban Water and Sewerage Authority be handed over to the Authority.

In the premises, I dismiss the appeal for want of merits. The convictions and the sentences imposed on the appellant are upheld.

It is so ordered.

**DATED** at **SUMBAWANGA** this 23<sup>rd</sup> day of May 2022.



  
J. F. NKWABI  
**JUDGE**