

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
CRIMINAL APPEAL NO. 51 OF 2021**

(Originating from Katavi Resident Magistrates' Court in Criminal Case No. 17 of 2020)

ABDALLAH ATHUMAN..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of Last Order: 13th April, 2022

Date of Judgment: 12th May, 2022

NDUNGURU, J

Before the Resident Magistrates' Court of Katavi at Mpanda, the appellant and two others who are not part of this appeal, were arraigned for three counts, whereas first count was Stealing contrary to Section 258 (1) and Section 265 of the Penal Code Cap 16 R.E. 2002 (Penal Code), second count was being in Possession of goods suspected of being stolen

c/s 312 (1) (b) of the Penal Code, and the third count was malicious damage to property c/s 326 (1) of the Penal Code.

When the charges were read over to the appellant and the other two culprits, they all protested their innocence. However, on conducting full trial, the appellant and another (1st accused person) were found guilty, convicted and sentenced to be imprisoned for four years for the 1st count and four years for the 2nd count, and both sentences were to run concurrently, meanwhile the other culprit (2nd accused person) was acquitted of both counts.

The appellant herein was dissatisfied. Only a lazy sheep would think its wool heavy, therefore, the appellant appeals to this court challenging the trial court's decision mainly on the ground that, the trial court erred at law by convicting him on an offence which was not proved beyond reasonable doubt.

On the hearing date the appellant was unrepresented meaning he fended for himself, and as he was invited to argue his appeal, he prayed for this court to consider the grounds of appeal he has filed as they were.

Mr. Peres learned State Attorney who represented the Republic supported the appeal. The learned State Attorney submitted that, the ground that the case was not proved beyond reasonable doubt is a crucial

ground that his side did not deal with appropriately during the trial. He added, his side has gone through the prosecution case and they were satisfied that the case against the appellant was not proved beyond reasonable doubt.

Mr. Peres furtherly submitted that there were no any evidence implicating the appellant in the two counts of the offence. He said, from the judgement of the trial court, it appears the appellant was convicted by the evidence of his co-accused, and that in the absence of another independent corroborative evidence, the court cannot rely on such evidence to convict the appellant, and he referred this court to section 33 of TEA.

Mr. Peres conclusively argued that the trial court used the principle of accomplice evidence, but the evidence is not detailed on how the appellant cooperated in committing the alleged offence, and therefore he prayed for this appeal to be allowed.

The only determinative issue is **whether the case was proved beyond reasonable doubt**. Fortunately, the parties to this appeal are in agreement that the case against the appellant was not proved beyond reasonable doubt. As such, my task is to satisfy myself on whether the parties' agreement should be upheld.

Upon re-reading the testimonies of PW3 (Josephat Byabanto), PW8 (H.699 DC Melikiadi) and PW9 (F.8925 DC Patric), PW3 only knew the appellant as he was their customer who buys excavator's scrappers from them, and he knew him even before the incident. PW8 during cross examination replied to the appellant's question that the 1st accused person mentioned him as an accomplice. PW9 testified he arrested the appellant after being told that he was a suspect, as he interrogated him, he realised that the appellant was communicated by the 1st accused person as he knew where to find buyers of scrappers and lorries.

At no point did any of the witnesses summoned by the prosecution side did testify that the appellant was either caught in possession of goods suspected of being stolen or rather did steal the said properties. I therefore agree with the learned State Attorney that the trial court used the principle of accomplice evidence, but the evidence is not detailed on how the appellant cooperated in committing the alleged offence. In the case of **Miraji Idd Waziri @ Simwana & Another vs Republic (Criminal Appeal 14 of 2018)** (Unreported), the Court of Appeal stressed that;

"To begin with, we agree in principle that evidence of an accomplice needs corroboration for it to be acted upon against an accused."

It follows therefore that, the charges against the appellant herein were not sufficiently proved before the trial court. And for the foregoing reasons, the appellant's conviction is hereby quashed. The Sentence imposed upon the appellant is set aside. The appellant is to be released from custody unless is held therein for other lawful causes.

It is so ordered.



A handwritten signature in blue ink, appearing to read "D. B. Ndunguru".

D. B. NDUNGURU

JUDGE

12.05.2022