

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

DC. CRIMINAL APPEAL NO. 25 OF 2022

**PAULO S/O MSANGAWALE APPELLANT
VERSUS**

THE REPUBLIC RESPONDENT

(Appeal from the decision of the District Court of Kalambo at Matai)

(R. M. Rugemalira, SRM)

Dated 30th day of December 2020

In

Criminal Case No. 51 of 2020

JUDGMENT

31/05 & 06/06/2022

NKWABI, J.:

The appellant, in this court, has paraded five grounds of appeal in his attempt to convince this court to find fault in the proceedings and judgment of the trial court. The trial court convicted and sentenced him to five years imprisonment for the offence of stealing an animal namely a donkey the property of Charles s/o Msangawale. The justifications of appeal are as follows:

- 1. That, the trial court erred in law point and fact by convicting and sentence the appellant for the case which were not proved beyond all reasonable doubt as required by standard law.*

2. *That, the trial court erred in both conviction and sentence for the appellant while misobserved that the evidence adduced by PW1 and PW2 was very poor to prove the case against the appellant.*
3. *That, the trial magistrate court misdirected himself by convicting and sentence the appellant relying on caution statement which tendered before the without considering that the said caution statement was admitted illegal.*
4. *That, the trial court erred in law point and fact to convict and sentence the appellant on the statement of prosecution side that the appellant was jumped bail without considering that I sent information before the court since I was seriously sick.*
5. *That, the trial court total erred in law point and fact to convict and sentence the without giving a chance to defence and indeed drawn a null conviction for the appellant.*

When the case was called up for hearing, the appellant appeared in person, fending for himself. The respondent was duly represented by Ms. Marietha Maguta, learned State Attorney. The Appellant was succinct in his submissions. He urged this court that the trial court convicted him on a case that was proved beyond reasonable doubt. He then prayed this court to adopt his grounds of appeal and release him.

Responding to the grounds of appeal as well as the submission of the appellant, Ms. Maguta stated that they support the conviction and sentence on the reason that they proved the charge sheet beyond reasonable doubt as PW1 identified the donkey and described it. She added that the appellant sold it to 2nd accused who was acquitted. She also said that the Appellant did not cross-examine which is deemed to have admitted the fact. She referred me to **Athuman V. Republic**, Criminal Appeal No. 264/2016 Court of Appeal of Tanzania at Tanga available on Tanzlii.

Ms. Maguta was of a further view that the appellant jumped bail and did not enter defence. Judgment was entered without his defence. No evidence that proves that the appellant was sick. She prayed that the appellant's 1st ground of appeal be dismissed. She then pointed out that the rest of the grounds of appeal have no basis as they relate to the 1st ground of appeal. This appeal has no merit. She urged me to find no culpability in the proceedings and judgment of the trial court and prayed I dismiss the appeal.

In closing the submissions, the Appellant vigorously prayed this court to release him as he did not commit the offence.

I start my consideration with the complaint in respect of his conviction in absentia which relate to the 4th and 5th grounds of appeal. On this lamentation, the appellant maintained that his conviction in absentia was wrong as he did not jump bail, rather, he was precluded from appearing in court by sickness, which he reported (sent an information).

The record reveals that on the next date the case was fixed for defence hearing, which was on 18/11/2020, the appellant failed to appear. No report as to his whereabouts, be it by his surety, as such an arrest warrant was issued against him. It was not until 30th December 2020 when the matter proceeded with judgment in his absence. I have gone through the whole trial court's record and I have found no such information that the appellant was sick. I dismiss this grievance based on **Olonyo Lemuna & Lekitoni Lemuna V Republic 1994 TLR 54 (CA)** where it was held inter alia:

"Section 226(2) of the Criminal Procedure Act 1985 makes provision for the court to set aside a conviction entered in the absence of the accused if it is satisfied that the absence was due to causes beyond the control of the accused; this accords to the accused person an opportunity to be heard;

...

Only prior to the close of the prosecution case are the circumstances set out in s 226 of the Criminal Procedure Act 1985 applicable; after the close of the prosecution case, s 226 is inapplicable and s 227 takes over;"

Clearly, since the appellant jumped bail, and did not attend court for almost a year after he jumped bail, he cannot be heard to complain that he was convicted without being given an opportunity to enter his defence. He cannot also complain that his defence was not considered as there is none due to his own wish. As to his claim that he was sick, just as I have observed above, he did not establish the claim as per requirement in **James Anthony Ifunda v Hamis Alawi**, Civil Application No. 482/14 of 2019, (unreported) (CAT) where it was held:

"In addition, the alleged sickness is not supported by a medical report or medical chits which could be acted upon by the Court. In the circumstances, I am satisfied that the first reason for the delay advanced by the applicant is untenable."

The 4th and 5th grounds of appeal, therefore, are without merit, they fail.

The third ground of appeal is the next justification of appeal for my consideration and determination. On this ground of appeal, the complaint is that, the trial magistrate court misdirected himself by convicting and sentencing the appellant relying on caution statement which tendered before the without considering that the said caution statement was admitted illegal.

I have gone through the proceedings of the trial court, at the time the caution statement was tendered, the appellant did not object its admission, the complaint in this appeal against the caution statement is mere afterthought. See, **Ally Rashidi @ Mndolwa v Republic**, Criminal Appeal no. 23 of 2006 (C.A.T.) (Unreported).

"This statement was also retracted. The trial judge in his well-reasoned analyses of the circumstances of the case found that the appellant was a free agent when he made the statements. We have no reason to find otherwise. The complaint that the appellant was tortured before he made the statements was raised for the first time when the appellant was giving his defence. We think that this was an afterthought. Because involuntariness of the statements was not raised as an issue

when PW1 and PW2 testified the question of conducting a trail within a trial did not arise.”

I now, revert to discuss the 1st and 2nd grounds of appeal together. In these grounds of appeal, the appellant laments that the case was not proved beyond reasonable doubt. That is because the evidence adduced by PW1 and PW2 was very poor to prove the case against the appellant.

Countering such argument, Ms. Maguta was of a strong view that they proved the charge sheet beyond reasonable doubt as PW1 identified the donkey and described it. She added that the appellant sold it to 2nd accused who was acquitted. She also said that the Appellant did not cross-examine which is deemed to have admitted the fact. She referred me to **Athuman V. Republic**, Criminal Appeal No. 264/2016 Court of Appeal of Tanzania at Tanga available on Tanzlii.

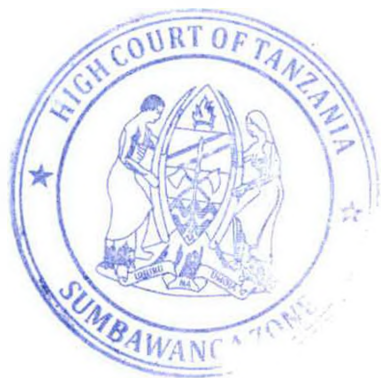
With the profound respect to the appellant and Ms. Maguta, I accept the arguments of Ms. Maguta in their totality in respect of the 1st and 2nd grounds of appeal. The evidence of the prosecution witnesses is very clear. No doubt that the respondent proved her case beyond reasonable doubt. PW1 was so detailed in how he found the donkey missing and the

follow-up he made that lead to the seizure of the donkey. In the circumstances, the case was proved beyond reasonable doubt against the appellant. The 1st and 2nd grounds of appeal are unmerited, they fail.

For those reasons, I dismiss the appeal for being devoid of any merit. I uphold the conviction and the sentence imposed against the appellant by the trial court.

It is so ordered.

DATED at **SUMBAWANGA** this 6th day of June 2022.



J. F. NKWABI

JUDGE