

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IRINGA SUB REGISTRY)  
AT IRINGA**

**CRIMINAL APPEAL NO. 17 OF 2021**

*(Original Criminal Case No. 178/2019 of the Resident Magistrate Court of Njombe at  
Njombe before Hon. F.E Ng'hwelo - RM)*

**MESHACK s/o SOWO @IBRAHIM @ MNGONI ..... APPELLANT**

**VERSUS**

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

**JUDGMENT**

*14/11/2022 & 03/03/2023*

**I.C. MUGETA, J:**

The appellant was charged with and convicted of two counts. Those counts are armed robbery contrary to section 287A of the Penal Code [Cap. 16 R.E 2002] and "doing" grievous harm contrary to section 225 of the Penal Code. It was alleged in the first count that on the 15<sup>th</sup> day of October, 2019 at Mani village within the district and region of Njombe, the appellant stole a motor cycle with Registration number MC. 309 CBB, make Kinglion being the property of Michael Kilasi (the victim), and immediately before



stealing he assaulted the victim with a machete in order to obtain the said goods.

In the second count, it was alleged in the particular of the offence that on the same date, the appellant unlawfully did grievous harm to the victim.

Upon conviction the appellant was sentenced to 30 and 3 years imprisonment in the first and second counts respectively. Aggrieved by both conviction and sentence, he has appealed based on three grounds:

- 1. That the trial Magistrate has erred in law and fact to convict and sentence the appellant while the respondent has failed to prove his case beyond reasonable doubt.*
- 2. That the trial Magistrate has erred in law and fact to convict and sentence the appellant based on single witness visual identification without warning himself over the danger associated with visual identification based on single witness.*
- 3. That the trial Magistrate has erred in law and fact to convict and sentence the appellant without considering contradictions and inconsistencies of the prosecution witnesses.*

*Angeta*

The appeal was heard by way of written submissions and only the appellant's advocate, Mr. Alex Nyoni filed his submissions. On the first ground he argued that the burden of proof in criminal cases lies on the prosecution as provided under section 110(1) and (2) of the Evidence Act, Cap. 6 R.E. 2022. That the prosecution failed to prove the case beyond reasonable doubt because the caution statement was wrongly relied upon while it was inadmissible for being taken beyond the statutory time of four hours as provided under sections 50(1) (a) and (b) and 51(1) (a) of the Criminal Procedure Act [Cap. 20 R.E. 2022]. He argued further that the appellant was arrested on 29/10/2019 in Songea and transported to Njombe where his cautioned statement was recorded on 31/10/2019 and no extension of time was sought. That the appellant objected the cautioned statement during trial but the same was overruled.

He submitted that the violation of sections 50(1) (a) and (b) and 51(1) (a) of the CPA is an irregularity which leads to expunging of the cautioned statement from the record. The advocate also complained on the circumstances under which the cautioned statement was recorded in that the appellant requested his friend to be present when his statement was

*Migeta*

recorded and indeed, his friend was summoned. That since the recording started at 13:32 hours and his friend had arrived while the appellant was brought to that police station at 13:30 hours, it suggests that his friend used only two minutes from Chaungingi to arrive at the police station. This, in his view, raises doubts if the statement was recorded in time.

On the second ground the learned advocate submitted that it is trite law that when the prosecution intends to rely on the identification of an accused by a single witness, the said witness should be credible. In the present case, the trial court did not warn herself on the danger of relying on identification by a single witness. Furthermore, he submitted, PW.1 did not tell the court what clothes the appellant wore on the material day. He cited the cases of **Athumani Shaban v. Republic [1976] LRT No. 15** and **Augustine Kente v. Republic [1982] TLR 122** to support his contention on visual identification.

In conclusion, he prayed the court to allow the appeal, quash the conviction, set aside the sentence and order immediate release of the appellant from prison.



It is my view that the three grounds of appeal are intertwined. I shall deal with them under one complaint which is whether the prosecution proved the charge against the appellant beyond reasonable doubts.

The law is well settled that the prosecution bears the burden of proving the case against an accused and the required standard of proof is beyond reasonable doubts per see section 3(2) (a) of the Evidence Act [Cap.6 R.E 2022]. A holding to similar effect is in the case of **Hemed v. Republic [1987] TLR 117**. The duty never shifts to the accused. The term beyond reasonable doubt was defined in **Magendo Paul & Another v. Republic (1993) TLR 219** where the Court held that:

*"For a case to be taken to have been proved beyond reasonable doubt its evidence must be strong against the accused person as to leave a remote possibility in his favour which can easily be dismissed"*

According to the evidence of both parties, the appellant was arrested on 29/10/2019. However, they part company on when he was sent to Njombe Police Station. None of the prosecution testified on this issue. Based on the caution statement (exhibit P1) which was recorded on 31/10/2019,

*Mageta*

assuming it was recorded within the statutory four hours, the prosecution evidence suggests he arrived on 31/10/2019. To the contrary, the appellant testified that he arrived at Njombe Police Station on 29/10/2019 at 22:00 hours. It was upon the prosecution to prove that the recording of the statement at 13:32 hours was done within the prescribed time. This was not done by the prosecution which renders the evidence of the appellant on time of his arrival unchallenged. I consider his evidence on this issue as credible and I hold that the recording of the caution statement on 31/10/2019 was outside the prescribed period. I accordingly expunge it from the record.

In the absence of the accused's cautioned statement in the record, the issue is *whether there is any other evidence which incriminates the accused as the offender.*

The victim testified in court on how the appellant boarded his motorcycle and finally assaulted him and spade away with his motorcycle. He also explained how he identified him as it had already dawned and they were familiar with each other. The incident, per the evidence of the victim, occurred at 06:00 hours. Counsel for the appellant has challenged the

*Angela*

uncorroborated single witness identification. However, I find the victim to be a credible witness. He could not have mistaken the appellant with another person because they were familiar with each other which fact is undisputed by the appellant.

Further, they spend a lot of time together as they exchanged a cell phone for the appellant to call his colleague. The identification of the appellant by the victim, in my view is watertight. He cannot be doubted when he said there was light at 06:00 hours when the incident occurred.

The victim also testified that he was assaulted with a machete before being robbed his motorcycle. That he suffered two cut wounds on the head and one on the hand. His evidence is corroborated by Jessam Nyato (PW4) who is a medical Doctor. He treated the victim. In his evidence PW4 testified that the victim had two head cuts wounds and one cut wound on the right hand.

The foregoing referred to evidence proves the two offences charged, namely, armed robbery and causing grievous harm. Consequently, I find no





reason to fault the trial court on both conviction and sentence in both counts. I uphold them.

In the event, I hold that the appeal is devoid of merit. I, accordingly, dismiss it. It is ordered.



  
**I. C. MUGETA**

**JUDGE**

**3/3/2023**

**Court:** Judgment delivered in chambers in the presence of the appellant and Alex Mwita, SSA for the respondent.

**Sgd: I. C. MUGETA**

**JUDGE**

**3/3/2023**