

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB-REGISTRY

AT ARUSHA

CRIMINAL APPEAL NO. 08 OF 2023

(Originating from Criminal Appeal No. 12/2022 Arusha District Court, Criminal Case No.

2199/2021 Arusha)

FELIX MOSES.....APPELLANT

VERSUS

LILIAN MOSSES.....RESPONDENT

JUDGMENT

20/11/2023

D. D. NDUMBARO J,

The matter originated from the primary court, it is a claim of common assault between Lilian Moses against Felix Moses (brother and sister). Felix Moses contrary to section 240 of Penal Code Cap 16 RE 2019.

It was alleged that Lilian assaulted Felix by canning him on the forehead and right hand. the charge was not proved beyond reasonable doubt hence Lilian was acquitted.

Being dissatisfied with the decision of the trial court decision Felix Moses appealed to the district court whereby the trial magistrate dismissed the appeal and upheld the decision of the trial court. Now Felix still dissatisfied with the decision of the district court hereby appeals against the decision and raises 4 grounds as

1. The first appellate court erred in law and fact by holding that the appellant failed to prove the case beyond reasonable doubt while there was ample evidence in the court record
2. The first appellate court erred in law and fact holding that the appellant's evidence is contradictory in the absence of evidence in the court record to the effect that the case at hand was proved at the required standard.
3. First appellate I court erred in law and fact holding that appellant documentary evidence such as PF3 was considered by the trial court in the absence of evidence in the court record to that effect.
4. The first appellate court erred in law by upholding the judgment and decision of the trial court while there is ample evidence in the court record to the contrary.

Both the appellant and respondent are self-represented.

On the first ground, the appellant argued that the trial court ruled the appellant failed to prove his case while there was sufficient evidence from the trial court record, all that can be found in the trial court proceedings.

On the second ground, the District Court erred in law by saying there was contradicting evidence of the appellant. Without considering PF3 from Primary Court proceedings, it was not considered in any way in the District Court.

On the third ground argued, the District Court erred in law by considering the evidence given by the Primary Court contradicting each other. Also claiming the trial court to adjourn the case most of the time. During the trial, he complained to trial Justice on the adjournment.

He argued considering the ample evidence of primary court record and proceedings quash the decision of the primary court and district and this court does just when the matter is proved.

In reply, respondent argued that all that adduced by the appellant is not true, am a woman and he is a man, true that I beat my brother with a Masai stick. Argued that, the appellant evidence from trial court

proceedings contradicting each other. They are not true, ready to bring any evidence to support her case if so needed.

On rejoinder, the appellant pray this Court to consider his submission, to disregard the submission by the respondent, and to set aside the judgment by the trial court.

Going through the submission of parties and documents in record the first and second grounds will be argued together because of their nature. In these two grounds, the question is whether there is any doubt left by district court on proving the case.

The evidence from the court record specifically on trial court proceeding page 7 shows PW1 testified that he was beaten by DW1, and it was witnessed by PW2 who was at the scene outside, he went to report the matter to the police and was given PF3. and the Doctor gave a report on the same on page 9 and 10. However, DW2 testified to be inside the house and witnessed his further was beaten from the class window (Page 8 of trial court proceeding) by DW1. DW1 in his defence faulted to have not committed the offence, rather there was a misunderstanding between them.

Contradiction PW1 and PW2, makes trial court draw the inference

that the witness statement contradicts. Evidence that contradicts given less value in the eye of the law. Hence ruled that, the case was not proved beyond reasonable doubt. Any reasonable doubt raised by the accused needs to be cleared by the appellant. in the celebrated case of Pascal Yoya @Maganga Versus Republic, Criminal Appeal No. 248 of 2017(Unreported), it was held that: -

"It is a cardinal principle of criminal law in our jurisdiction that, in cases such as the one at hand, it is the prosecution that has a burden of proving its case beyond reasonable doubt. The burden never shifts to the accused. An accused only needs to raise some reasonable doubt on the prosecution case and he need not prove his innocence.

That appellant had the duty to clear those contradictions during cross-examination but remained silent, silence means acceptance of the fact, which also affects a decision in his favour.

On the 3 and 4 grounds argue that PF3 was not considered. Going through the court record it was mentioned that PW1 was given PF3 on pages 8 and 10 of the trial court proceeding, but nowhere in the court records shown that the appellant made prayer before the court admitting

PF3 as an exhibit to be used before the court. For the court to use an exhibit needs to be admitted. This is clearly seen in the case of Mong'ateko vs Mak Medics Ltd Civil Appeal 106 of 2019 [2022] TZCA 452 held

"It is trite law that, a document which is not admitted in evidence cannot be treated as forming part of the record even if it is found amongst the papers in the record... Therefore, it is clear that the two courts below relied on the evidence which was not tendered and admitted in evidence as per the requirement of the law. This omission led to a miscarriage of justice because the appellant was adjudged on the basis of the evidence which was not properly admitted in evidence..."

In this appeal at hand, the exhibits were not admitted, the court did not rely on the same.

I found this appeal to have no merit; I therefore uphold the decision of trial Court and District court.

It is ordered accordingly.

The right of appeal is explained

Dated at ARUSHA this 20th day of November 2023.

D. D. NDUMBARO

JUDGE

20/11/2023

Judgment delivered this 20th Day of November 2023 in the presence of the appellant in person and respondent in person, is hereby certified as a true copy of origin.




D. D. NDUMBARO

JUDGE

30/10/2023