

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

AT ARUSHA

CRIMINAL APPEAL NO. 175 OF 2022

(Originating from Karatu District Court via Criminal Case No. 152 of 2022)

PATRICIA JOSEPHAPPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

18/10/2023 & 23/11/2023

GWAE, J

The appellant, Patricia Joseph was arraigned before District Court of Karatu of Karatu ("trial court") on the 12th day of August 2022. She was charged with two counts, to wit; creating disturbance c/s 89 (1) (b) of the Penal Code (Cap. 16, Revised Edition, 2019) (the Penal Code) and theft c/s 258 and 265 of the Code.

Initially, the prosecution alleged for the 1st count that, on 30th May 2022 at 21: 20 hrs at Doffa Village-Njia Panda area within Karatu District in Arusha Region, the appellant did unlawfully cause disturbance to one Happyness d/o Sarrya by threatening to assault her with stick in such manner as is likely to cause a breach of the peace. In the 2nd count, it was alleged that, on the material date, time and places aforementioned the

appellant did steal cash money Tshs. 1,600,000/= the property of the said Happyness Sarrya.

It was the prosecution evidence that, on the material date, the appellant went to her house. The house was leased to the said Happy Sarrya and other tenants. It is further the prosecution evidence that the appellant with two youths one being the child of Happy (January Gati and Damas) and appellant's relative. As the appellant and those whom she went with as well as one Neema and Humprey were in the house, a fracas occurred. Shortly the victim left the house with a view of reporting the matter at police station leaving her purse with Tshs. 1,600,000/ to the sitting room. The victim, PW1 further adduced that she was with one Neema and that, when she reported the matter to police Neema was there till when she returned back.

In his defence, the appellant who testified as DW1 and her tenants one Maurine (DW2), Patrick Paul (DW3) denied the alleged occurrence of the offences leveled against the appellant by stating that there was no fracas on the material date. However, the defence witnesses admitted that the appellant went to her house to solve the toilet problem allegedly caused by the victim.

In its conclusion after analysis of the evidence before it, the trial court found the appellant's guilt to have been sufficiently established for

both counts. Therefore, the trial court proceeded convicting the appellant and sentenced her to pay a fine at the rate of Tshs. 200,000/= and a conditional discharge, not to commit any offence within six months for the 1st and 2nd count respectively. Additional to the above, the appellant was ordered to pay the sum of Tshs. 300,000/=being a compensation to the victim, Hypaness d/o Sarrya.

Feeling wounded by the trial court's conviction and the sentence thereof, the appellant is now before this court praying for the trial court's decision be quashed and set aside, findings, judgment, conviction, sentence and compensational order be set aside and any other relief. She is thus armed seven (7) grounds of appeal namely;-

1. That, the trial court erred in law and fact to convict the appellant while the prosecution side totally failed to prove the case against the appellant beyond reasonable doubts
2. That, the trial court erred in law and fact to convict the appellant while the ingredients of the offences she stood charged with were not established
3. That, the District court erred in law and fact to convict the appellant for it totally failed to properly analyse evidence adduced and employed wrong reasoning, thus made wrong finding and decision.
4. That, the District court erred in law and fact for failure to draw negative inference against the failure of the prosecution side to call important witness

5. That, the trial court erred in law and fact to convict the appellant for the offence of theft while the trial court was satisfied that, it was not the appellant who stole the purported money. Hence, the appellant was wrongly punished for the act of other third parties
6. That, the trial court erred in law and fact to assume the purported youth to be under age or under legal care of the appellant without any evidence to that effect
7. That, the trial court erred in law and fact to order unfair and unfounded compensation order against the appellant

In this appeal, Mr. Samwel Welwel, the learned advocate appeared representing the appellant, as was the case before the trial court whereas Ms. Alice Mtenga represented the Republic. On 24th July 2023 when the parties' representatives appeared, this court ordered the appeal be argued by way of written submission. Nevertheless, the appellant's appeal in essence was not resisted by the respondent.

Having considered that, the appellant's grounds of appeal, the impugned judgment as well as the parties' written submissions, I have observed that, there are two appellant's grounds of appeal for the court's determination in this appeal. These are; whether the offence in the 1st count was proved and whether the offence of stealing the appellant stood charged was equally proved by the prosecution.

Starting with the 1st ground of appeal,

As rightly argued by the appellant's counsel and conceded by the respondent's learned state attorney, going through the evidence on record, it cannot be safely held that, the appellant caused breach of peace. I am holding so since the rationale of the appellant's act of going to the house where the victim was a tenant was known and made to other tenants. In my view, the appellant was justified to go to her house and know what was wrong with the toilet, used by other tenants including the victim. The standard of proof in criminal is no other than that of proof beyond reasonable doubt as was rightly renowned in **Jonas Nkize vs. Republic** (1992) TLR 213 where it was held that;

"The general rule in criminal prosecution that the onus of proving the charge against the accused beyond reasonable doubt lies on the prosecution is part of our law, and forgetting or ignoring it is unforgivable, and is a peril not worth taking".

South African Court in stressed the same legal position in **State vs. Van Der Meyden** 1999 (2) SA (WLD) at 80H-81C where it was held that:

"The onus of proof in a criminal case is discharged by the State if the evidence establishes the guilt of the accused beyond reasonable doubt. The corollary is that he is entitled to be acquitted if it is reasonably possible that he might be innocent".

In our present criminal matter, the appellant together with her witnesses had raised serious doubt as to the appellant's guilt since her visiting the house was not proved to have tainted with ill motive. Therefore, the 1st ground of appeal is allowed.

In the 2nd ground, whether the trial court was justified to enter conviction against the appellant for the 2nd count.

As earlier explained, the prosecution ought to have proved that it was the appellant who had stolen the said Tshs. 1, 600,000/=. In our case, the prosecution was able to establish that the principal witness, PW1 left her purse containing Tshs. 1, 600, 000/= and when she turned back from police station she did not find it. Here there is only circumstantial evidence incriminating the appellant since she was not alone in the room. According to PW1, there were other persons in that room namely; January Gati, Mabasi, Humprey and Neema. It is trite principle that, in criminal responsibility, an accused person must be punished for an offence that, he has personally committed it and not the offence committed by another person.

In our case it is not clear who stole the money, if as alleged by the prosecution but there is no direct evidence except circumstantial one. Since there were other persons in the room, it follows therefore, any other

person in that room would steal the money unless there is evidence that the appellant was seen stealing and in addition she led to recovery of the stolen money or part thereof. Furthermore, there was no proof of the youths that accompanied the appellant to the scene of crime. For clarity, parts of the complaint's statement is reproduced herein;

"She told them to give fimbo, that two youths are; one is the child of the accused person known as January Gati and second is Damasi, is relative of the accused person.. on that time one young known as Humprey, he asked what was happened (sic).....Humprey asked youths, you escort this mother to fight...I remember that I leave (sic) my poach.. when I went to the sitting room I didn't found (sic) my poach even that youths. When I reached outside the get I found Humprey alone, I asked where that people were, he replied that they had already leave (sic).
xx. Humprey and Neema before they were not aware if I had money... Janu and Damasi in my statement I mentioned but police told me that these two came via accused person."

Examining the evidence adduced by the prosecution side including that of the complainant whose part is quoted, unable to uphold the decision of the trial court in that regard. Since the evidence on record before the trial court is circumstantial one, in my view, the same would not be sufficient or define to warrant the conviction by the trial court. This

position of the law was stressed in **Peter Didia @ Rumala vs. Republic**, Criminal Appeal No. 421 of 2019 (unreported) where the Court of Appeal emphasized that in order for circumstantial evidence to secure conviction it must meet the following tests;

1. *Circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established*
2. *These circumstances must be of definite tendency unerringly pointing towards the guilt of the accused*
3. *The circumstances taken cumulatively should form a chain so complete that there is no escape from conclusion that within all human probability the crime was committed by the accused and no one else”.*

Basing on the above enunciated principles of law and in the light of evidence on record, it is my considered view that, the same cannot be safely relied to forms basis of the appellant’s guilt. It is so found for an obvious reason that there were other persons who were in that room. Since circumstantial evidence against the appellant is so scant to convince the court as the 1st appellate court to uphold the decision of the trial court. Hence, the 2nd ground of appeal is merited

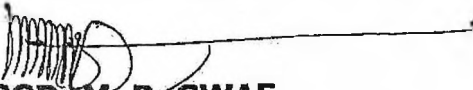
Therefore, the above findings are capable of disposing of the appeal.
Hence, should not be curtailed determining other grounds of appeal

Consequently, this appeal is allowed. The trial court's conviction and sentences including its ancillary order of compensation are quashed and set aside.

It is so ordered.

DATED at DAR ES SALAAM this day of 23rd November 2023




SGD: M. R. GWAE
JUDGE