

**IN THE HIGH COURT OF TANZANIA
AT MBEYA
CRIMINAL APPEAL NO. 151 OF 2023**

**(Originating from the Court of Resident Magistrate of Mbeya at Mbeya, in
Criminal Case No. 293 of 2020)**

CHRISTOPHER s/o SANGAAPPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date: 25 October 2023 & 13 November 2023

SINDA, J.:

The appellant, Christopher Sanga, was charged with and convicted of eight counts of the offence of robbery by the Court Resident Magistrate of Mbeya at Mbeya (the **Trial Court**) contrary to section 287A of the Penal Code, Cap 16 R.E 2022 (the **Penal Code**). He was sentenced to 7 years imprisonment.

The particulars of the offence are that on 5 November 2019 at Kapunga Village, Mbarali District, Mbeya Region the appellant and other three persons who were not present at the Trial Court did steal Tanzanian Shillings Five Hundred Thousand (TZS 500,000.00/=) the property of one Yusuph Konga, Tanzanian Shillings Four Hundred Eighty Thousand (TZS 480,000.00/=) the property of one James Mganwa, Tanzanian Shillings Four Hundred Fifty Thousand (TZS 450,000.00/=) the property of one Musa Luvanda, Tanzanian Shillings Three Hundred Seventy Thousand

(TZS 370,000.00/=) the property of one Amon Kapalamba, Tanzanian Shillings Seven Hundred Fifty Thousand (TZS 750,000.00) the property of one Pascal Mfulu, Tanzanian Shillings Two Hundred Fifty Thousand (TZS 250,000.00) the property of one Ally Juma @Kazimbaya, Tanzanian Shillings Two Hundred Thousand (TZS 200,000.00) the property of one Katalina Mfikwa, and Tanzanian Shillings Two Hundred Fifty Thousand (TZS 250,000.00) the property of one Gwakisa Abraham.

Further, immediately before or after such stealing the appellant did use an iron bar to threaten Yusuph Konga, James Mganwa, Musa Luvanda, Amon Kapalamba, Pascal Mfulu, Ally Juma @Kazimbaya, Katalina Mfikwa and Gwakisa Abraham in order to obtain or retain the aforesaid money or to overcome resistance respectively.

Against that decision, the appellant appeals on a number of grounds which can be summarized as follows:

1. That the Trial Court erred in law when it convicted and sentenced the appellant without evaluating the evidence of the following witnesses PW1, PW2, PW3, PW4, PW5, PW6, PW7 and PW8, in order to ascertain how the appellant was able to rob the victims their monies while they were all following the appellant to go to the other victims;
2. That the Trial Court erred in law when it convicted the appellant without properly investigating that no one among PW1, PW2, PW3, PW4, PW5, PW6, PW7 and PW8 could explain to the Trial Court how

the appellant kidnaped or threatened them with any weapon or that he broke the doors of their houses;

3. That the Trial Court erred in law when it convicted the appellant without investigating the evidence of PW1 which confirms that the appellant was not a robber, but the appellant went to collect his monies from PW1, PW2, PW3, PW4, PW5, PW6, PW7 and PW8. That is why PW1 went outside to borrow money so that he could pay the appellant and that's when they we went together to other people who owes the appellant money;
4. That the Trial Court erred in law when it convicted the appellant without investigating how the appellant by himself without going to the victims to request for his money it is difficult to get together eight (8) men and take their money without causing any chaos. It is obvious that PW1, PW2, PW3, PW4, PW5, PW6, PW7 and PW8 colluded and framed the appellant with this case in order not to pay his money;
5. That the Trial Court erred in law when it convicted the appellant without noting that the appellant was not caught with the properties of the victims as such the charge of robbery was not concluded;
6. That the Trial Court erred in law when it convicted the appellant by believing on the information that he is a robber and was involved with other robbers while none of them was brought before the Trial Court;

7. That the Trial Court erred in law when it convicted the appellant by relying on the cautioned statement which goes against with the evidence of the victims including PW1; and
8. That the appellant evidence was not considered.

At the hearing of the appeal on 25 October 2023, the appellant appeared in person, unrepresented. The respondent was represented by Mr. Rwegira Deusdedith, learned State Attorney. The appellant adopted his grounds of appeal as stated in the petition of appeal. He prayed that the conviction be quashed and the sentence be set aside.

Mr. Deusdedith supported the appeal on the ground that the evidence adduced in the Trial Court was not watertight due to the following reasons.

He submitted that the evidence of identification did not prove beyond reasonable doubt that the appellant was properly identified. He further submitted that the Trial Court convicted the appellant based on the assessment of the evidence on the issue of identification. The Trial Court satisfied itself that all the victims, who were nine (9), identified the appellant as being among those who robbed them.

Mr Deusdedith argued that the evidence of the investigator PW10 that he was the one who arrested the robbers and stated that one of them was in full military combat, others were civilians, and that one of them was

the appellant in the dock. Now, this witness does not clarify as to whether the appellant was in combat or civilian attire.

He further argued that according to the preliminary hearing, it was alleged that the appellant was a military officer, and the witness did not tell us whether the appellant was in military attire or civilian attire.

Mr. Deusdedit contended that other witnesses failed to give a full description of the person who attacked them; what they did was to point at the accused while he was at the dock. PW2, who was among the victims, said that there were four robbers, but he only saw the one in the dock. he did not describe his attire to prove that he was a military officer.

Mr. Deusdedit further stated that PW3 also one of the victims, on page 29 of the typed proceedings of the Trial Court (the **Proceedings**), stated that the person holding the 'nondo' was the one to whom I gave the money. It is this person (the accused). The witness does not give the full description of that person.

Mr. Deusdedit added that PW4 at page 31 of the typed proceeding identified the thieves that one of them is here, pointing at the accused. He does not fully describe the description of the person he points in court. He contended that this was the same for PW5, PW6, PW7, PW8 and PW9.

He further submitted that there is no full description of the appellant which was given by the witnesses. That the appellant was a military officer who participated in the robbery. He argued that this lacuna would have been

cured if at all an identification parade was conducted. So long as an identification parade was not conducted, what remained was the dock identification which in this circumstance is not collaborated. He further stated that because the reason to convict him was on identification, and the witnesses did not give a full description of the accused, it is on that basis that the prosecution are supporting this appeal.

In rejoinder, the appellant prayed the court to allow his appeal.

I have considered the District Court's record and the parties' arguments. I have scrutinized whether the case against the appellant was proved beyond reasonable doubt.

PW1 stated that he was robbed (TZS 500,000.00/=). PW1 further stated that the robbers said 'zungu fungua'. He did not say how the robbers entered the house to prove the robbery. Further, there is no proof of robbery because the courts records show that PW1 did not have any money and he borrowed Tanzanian Shillings Three Hundred Ninety Thousand (TZS 390,0000).

Also, PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8 and PW9 failed to prove that among the robbers, the person at the dock was the one who took their money. For instance, PW2 said the person in the military uniform was the one who took Tanzanian Shillings Five Hundred Thousand (TZS 500,000). The witness did not give a full description of the person.

This is the same for PW3, PW4, PW5, PW6, PW7, PW8 and PW9. There evidence is not different from the evidence of PW1 and PW2. They do not say how they were robbed for the ingredients of robbery to be conclusive.

In the case of ***Francis Majaliwa Deus and 2 Others vs Republic Criminal Appeal No. 139 of 2005 (unreported)***, which adopted the reasoning in the case of Gabriel Kamau Njoroge vs Republic (1982- 1988) 1 KAR 1134 in which the Court of Appeal of Kenya stated that:

"Dock identification is worthless (the court should not rely on dock identification) unless this has been preceded by a properly conducted parade."

In my opinion, dock identification, however numerous, is useless without a previous identification parade.

Furthermore, the prosecution has failed to prove its case beyond a reasonable doubt.

Sections 110(1) and (2) and 112 of Evidence Act Cap. 6 R.E 2022 (the **TEA**) states that, he who alleges must prove and the burden of so proving lies on him. See also the cases of ***Abdul Karim Haji vs. Raymond Nchimbi Alois and Another, Civil Appeal No. 99 of 2004, Nathaniel Alphonse Mapunda and Benjamin Mapunda vs. Republic [2006] TLR 395 and Zombo Rashid vs. Republic, Criminal Appeal No. 7 of 2012 (CAT-unreported)***.

Evidence must therefore be led by the prosecution in proving that, the offence was actually committed and so committed by the accused person. It is also trite law that, in all criminal matters the standard of proof is that of beyond reasonable doubt as provided under section 3(2)(a) of the TEA, as conviction cannot be grounded on mere suspicion. The standard was considered in the case of ***Nathaniel Alphonse Mapunda and Another*** (supra), when the Court observed thus:


- i) *" As is well known, in a criminal trial the burden of proof always lies on the prosecution. Indeed, in the case of Mohamed Said vs. Republic this court reiterated the principle by stating that in a murder charge the burden of proof is always on the prosecution, and the proof has to be beyond reasonable doubt.*
- ii) *Where circumstantial evidence is relied on, the principle has always been that facts which an inference of guilt is drawn must be proved beyond reasonable doubt.*
- iii) *In criminal charge, suspicion alone, however grave it may be it is not enough to sustain a conviction, all the more so, in a serious charge of murder."*

From the above cited authorities it is evident to this Court that, evidence must be led by the prosecution towards proving that, it is the accused and accused person only who is responsible for commission of an offence as per the charge laid at his door since suspicion alone however grave it may be is not enough to sustain conviction.

Consequently, I allow the appeal, quash and set aside the conviction and sentence and order the immediate release of the appellant from prison unless held for another lawful cause.

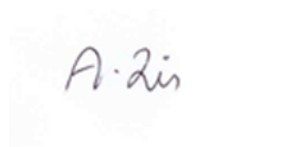
The right of appeal was explained.

DATED at MBEYA on this 13th day of November 2023.



**A. A. SINDA
JUDGE**

The Judgment is delivered on this 13th day of November 2023 in the presence of the appellant, who appeared in person, and Ms. Lyimo, counsel for the respondent.



**A. A. SINDA
JUDGE**